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SUPREME COURT OF THE UNITED STATES.

No. 48.

CHARLES TYNG, CLAIMANT OF THE SCHOONER CATHARINE, HER TACKLE &c., APPELLANT,

vs.

THE UNITED STATES, LIBELLANTS.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, James W. Metcalf, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office, except the original citation annexed.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, [L. S.] in the southern district of New York, this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the said United States the sixty-sixth.

J. W. METCALF, *Clerk.*

Citation.

By the honorable Samuel R. Betts, one of the judges of the Circuit Court of the United States for the southern district of New York, in the second circuit—To the United States of America, Ogden Hoffman, Esq., district attorney of the United States for the southern district of New York.

Whereas, Charles Tyng, claimant of the schooner Catharine, her tackle, &c., appellant, lately issued out of the Supreme Court of the United States an appeal, directed to the judges of the Circuit Court of the United States for the southern district of New York, second circuit, stating, that in the record and proceedings, as also in the rendition of the decree in the said court, before the judges thereof, between Charles Tyng, claimant of the schooner Catharine, her tackle, &c., appellee, and the United States of America, libellants and appellants, a manifest error hath happened, to the great damage of the said Charles Tyng, claimant and appellee; and whereas, for the correction of that error in due manner, the said appeal has been entered, returnable at the next stated Supreme Court of the United States, to be held at the city of Washington on the second Monday of January next: You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said second Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the last Monday of November, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-sixth.

SAM'L R. BETTS.

Due service of the foregoing citation is hereby admitted.

O. HOFFMAN, *U. S. Att'y.*

At a stated term of the District Court of the United States of America for the southern district of New York, held at the city hall, in the city of New York, on Tuesday the fourth day of August, in the year of our Lord one thousand eight hundred and forty. Present: the honorable Samuel R. Betts, district judge.

THE UNITED STATES OF AMERICA,
vs.
THE SCHOONER CATHARINE, her tackle, apparel, and furniture.

At a special district court of the United States of America, for the southern district of New York, held at the city of New York, in the said district, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and thirty-nine, comes Benjamin F. Butler, the attorney of the said United States for the southern district of New York, who prosecutes in this behalf for the said United States, and being present at this honorable court in his proper person, in the name and on behalf of the said United States, alleges, propounds, and declares as follows:

First. That a certain schooner or vessel, called the Catharine, being the property, wholly or in part, of a citizen or citizens of the United States, or of persons residing within the United States, to the said libellant unknown, was heretofore, to wit: on or about the first day of April, in the year of our Lord one thousand eight hundred and thirty-nine, by some person or persons, being a citizen or citizens of the United States, or residing within the same, to the said libellants unknown, built within a port of the United States, that is to say, within the port of Baltimore, in the State of Maryland, and within the jurisdiction of the United States, for the purpose of carrying on trade or traffic in slaves to some foreign country to the said libellant unknown, contrary to the form of the statute in such case made and provided, being the act of Congress, entitled "An act to prohibit the carrying on the slave trade from the United States to any foreign place or country. Approved, March 22, 1794."

Secondly. That the said schooner or vessel, so owned as aforesaid, was heretofore, to wit, on or about the fifteenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, by some person or persons, being a citizen or citizens of the United States, or residing within the same, to the said libellants unknown, caused to sail from a port of the United States, that is to say, from the port of Baltimore, in the State of Maryland, and within the jurisdiction of the United States, for the purpose of carrying on trade or traffic in slaves, to some foreign country to the said libellants unknown, contrary to the form of the statute in such case made and provided, being the aforesaid act of Congress of the 22d of March, 1794.

Thirdly. That a certain schooner or vessel, called the Catharine, being the property, wholly or in part, of a citizen or citizens of the

United States, or of persons residing within the United States, to the said libellant unknown, was heretofore, to wit, on or about the first day of April, in the year of our Lord one thousand eight hundred and thirty-nine, by some person or persons, being a citizen or citizens of the United States, or residing within the same, to the said libellants unknown, built within a port of the United States, that is to say, within the port of Baltimore, in the State of Maryland, and within the jurisdiction of the United States, for the purpose of procuring from some foreign kingdom, place, or country, to the said libellants unknown, the inhabitants of such kingdom, place, or country, to be transported to some foreign country, port, or place, to the said libellants unknown, and to be sold or disposed of as slaves, contrary to the form of the statute in such case made and provided, being the act of Congress of the 22d of March, 1794.

Fourthly. That the said schooner or vessel, so owned as aforesaid, was heretofore, to wit, on or about the fifteenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, by some person or persons, being a citizen or citizens of the United States, or residing within the same, to the said libellant unknown, caused to sail from a port of the United States, that is to say, from the port of Baltimore, in the State of Maryland, and within the jurisdiction of the United States, for the purpose of procuring, from some foreign kingdom, place, or country, to the said libellants unknown, the inhabitants of such kingdom, place, or country, to be transported to some foreign country, port, or place, to the said libellants unknown, and to be sold or disposed of *as* slaves, contrary to the form of the statute in such case made and provided, being the aforesaid act of Congress of the 22d of March, 1794.

Fifthly. That the said schooner or vessel, so owned as aforesaid, heretofore, to wit, on or about the first day of July, in the year of our Lord one thousand eight hundred and thirty-nine, was employed and made use of by some person or persons, being a citizen or citizens of the United States, or being a person or persons residing within the United States, to the said libellant unknown, in the transportation and carrying of slaves from some foreign country or place, to the said libellant unknown, to some other foreign country or place, to the said libellant unknown, contrary to the form of the statute in such case made and provided, being the act of Congress entitled "An act in addition to the act entitled 'an act to prohibit the carrying on the slave trade from the United States to any foreign place or country.' Approved, May 10, 1800."

Sixthly. That the said schooner or vessel, so owned, as aforesaid, was heretofore, to wit, on or about the first day of April, in the year of our Lord one thousand eight hundred and thirty-nine, by some person or persons, to the said libellant unknown, built in a port or place, within the jurisdiction of the United States, that is to say, in the port of Baltimore, in the State of Maryland, for the purpose of procuring negroes, mulattoes, or persons of color, from some foreign

kingdom, place, or country, to the said libellants unknown, to be transported to some other port or place, to the said libellants unknown, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor, contrary to the form of the statute in such case made and provided, being the act of Congress entitled "An act to prohibit the introduction of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight," and to repeal certain parts of the same, approved April 20, 1818.

Seventhly. That the said schooner or vessel, so owned, as aforesaid, was, heretofore, to wit, on or about the first day of April, in the year of our Lord one thousand eight hundred and thirty-nine, by some person or persons, to the said libellants unknown, built and prepared in a port or place, within the jurisdiction of the United States, that is to say, in the port of Baltimore, in the State of Maryland, for the purpose of procuring negroes, mulattoes, or persons of color, from some foreign kingdom, place, or country, to the said libellant unknown, to be transported to some other port or place, to the said libellant unknown, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor, contrary to the form of the statute in such case made and provided, being the aforesaid act of Congress of the 20th of April, 1818.

Eighthly. That the said schooner or vessel, so being owned, as aforesaid, was, heretofore, to wit, on the 15th day of May, in the year of our Lord one thousand eight hundred and thirty-nine, by some person or persons, being a citizen or citizens of the United States, or being a person or persons residing within the United States, to the said libellant unknown, caused to sail, from a port or place within the United States, that is to say, from the port of Baltimore, in the State of Maryland, for the purpose of procuring negroes, mulattoes, or persons of color, from some foreign kingdom, place, or country, to the said libellant unknown, to be transported to some other port or place, to the said libellant unknown, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor, contrary to the form of the statute in such case made and provided, being the aforesaid act of Congress of the 20th April, 1818.

Ninthly. That the said schooner or vessel, called the Catharine, is now in the port of New York, in the southern district of New York, and within the jurisdiction of this honorable court.

Tenthly. That by reason of the premises, and by force of the statute in such cases made and provided, the said schooner or vessel, as aforesaid, her tackle, apparel, furniture, and appurtenances, have become forfeited to the use of the United States.

Lastly. That all and singular, the premises are, and were, true, public, and notorious, of which, due proof being made, the said libellant prays the usual process and monition of this honorable court, in this behalf to be made, and that all persons interested in

the said schooner or vessel, or in her tackle, apparel, furniture, or appurtenances, may be cited in general or special, to answer the premises, and all due proceedings being had, that the said schooner or vessel, with her tackle, apparel, furniture, and appurtenances, may for the causes aforesaid, and others appearing, be condemned by the definitive sentence and decree of this honorable court, as forfeited to the use of the United States, according to the forms of the several statutes in such case made and provided, being the several acts of Congress herein before referred to.

B. F. BUTLER,
U. S. Dis't Attorney for the Southern District of New York.

January 21, 1840.

The libel filed in this cause being read, and the marshal having returned, upon the monition issued therein, that in obedience to said precept, he had attached the said schooner Catharine, her tackle, apparel, &c., and had given due notice to all persons claiming, that this court would, on this day, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same. On motion of Benjamin F. Butler, Esq., United States district attorney, proclamation was duly made for all persons to appear and show cause, if any they have, why the said schooner Catharine, her tackle, apparel, &c., should not be condemned and sold as forfeited, pursuant to the prayer of the said libel; whereupon, on motion of Messrs. Tillon and Cutting, proctors for Charles Tyng, the claimant of the vessel, and of J. Watson, Esq., for William Michael and James Foxcroft, seamen, one day's time was given to file their respective claims; and, on motion of Benjamin F. Butler, Esq., United States district attorney, ordered that the defaults of all others whomsoever, other than the said claimants, be entered, and the same are hereby accordingly entered.

To the honorable Samuel R. Betts, judge of the District Court of the United States, for the southern district of New York.

The petition and claim of William Michael, late first mate, and James Foxcroft, late mariner of the American schooner Catharine, whereof Frederic A. Peterson now is, or late was, master, respectfully showeth:

That in the month of June, in the year one thousand eight hundred and thirty-nine, the said schooner, whereof the said Frederic A. Peterson was master, being at the port of Havanna, in the West Indies, and destined on a lawful commercial trading voyage from thence to Prince's Island, coast of Africa, he, the said Frederic A. Peterson himself, or by his agent on the high seas, and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of the United States and of this honorable court, did ship and hire your petitioners to serve, respectively, as first mate

081.

and mariner, on board the said schooner, for and during said voyage, at the rate of wages of thirty-five dollars a month for the said William Michael, as first mate, as aforesaid, as will appear by the schedule hereunto annexed marked A, and at the rate of wages of fifteen dollars a month for the said Jame Foxcroft, as a mariner, as aforesaid, as will appear by the schedule hereunto annexed, marked B, and that for the due performance of the said voyage, your petitioners signed and duly executed certain articles of agreement, commonly called the shipping or mariners' articles, to which the said petitioners pray leave to refer. That in pursuance thereof, your petitioners on or about the twenty-sixth day of June, one thousand eight hundred and thirty-nine, went on board and entered into the service of the said schooner, as first mate, and as mariner, as aforesaid.

And your petitioners further show, that the said schooner, having taken on board a cargo of divers goods and merchandize for the said voyage, proceeded therewith, and with your petitioners on board, for the port of Pierce's Island, on the coast of Africa. That on her way to the port, and before her arrival there, the said schooner was forcibly and unlawfully seized on the said coast of Africa, by the British cruizer called the Dolphin, and brought by the said cruizer to the port of New York, within the jurisdiction of this honorable court. That your petitioners continued in their respective services on board of the said schooner until the 15th day of January, one thousand eight hundred and forty, when they were discharged from the service of said vessel by the marshal of the United States for the said southern district of New York. That during the whole time your petitioners were in the service of said vessel—to wit, from the time when they went on board thereof, to the time of their discharge therefrom, as aforesaid—they well and truly performed their respective duties as first mate and mariner as aforesaid on board of said schooner, according to their best ability, and were obedient to all the lawful commands of the said master and the other officers of said vessel, and well and truly deserved and are entitled to the wages in the schedules hereunto annexed, amounting, for the said William Michael, to two hundred thirty-three $\frac{83}{100}$ dollars, and for the said James Foxcroft to one hundred dollars—which the said master or owner, or any one *or* them or either of them, behalf, although often requested, have hitherto wholly refused to pay, or any part thereof.

And your petitioners further show, that they are informed and believe that the said schooner has been libelled or attached by or on behalf of the United States, for a contravention of the laws thereof; and that the same, with its appurtenances, are now under the control of the officers of the said United States in the southern district of New York.

And your petitioners further state, that whatever might have been the character of the voyage to the coast of Africa, they have acted

in entire good faith, signed articles for a common trading voyage, as they honestly supposed, and, if the voyage has been broken off, it has been through the fault of the master and owner or owners of the said vessel, and not through the fault or wrong doing of the said petitioners; and that the petitioners have a prior lien or claim upon said vessel for the payment of their wages.

Your petitioners therefore pray, that their respective claims for wages may be allowed and paid by the United States, the present claimants of the said vessel, and, if necessary, that process in due form of law, according to the course of courts of admiralty, and of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said schooner, her tackle, apparel, and furniture, wherever the same may be found; and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer all and singular the matters so articulately propounded and above set forth; and that this honorable court would be pleased to pronounce for the wages aforesaid, and for such other relief to the petitioners as shall to law and justice appertain; and also to condemn the said schooner, her tackle, apparel, and furniture, and the parties intervening therefor in costs.

W. MICHAEL,
JAMES FOXCROFT.

ALEX. WATSON, *Proc. for Lib'ts.*
A. NASH, *of Counsel.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

On this twenty-first day of January, A. D. 1840, before me, the subscriber, an United States commissioner in and for the southern district of New York, personally came and appeared William Michael and James Foxcroft, the petitioners in the above petition named, who, being severally by me duly sworn, did depose and say, that they had heard read the foregoing petition, and knew the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated to be on their information and belief, and as to those matters they believe it to be true.

S. RAPELJE,
U. S. Comm'r, &c.

Schedule annexed, marked A.

Wages due to Wm. Michael from the 26th June, 1839, to the 15th January, 1840, being six months and twenty days, at the rate of 35 dollars per month, - - - $233 83

Schedule annexed, marked B.

Wages due to James Foxcroft from the 26th June, 1839, to the 15th January, 1840, being six months and twenty days, at the rate of 15 dollars per month, - - - $100 00

682.

The claim and answer of Charles Tyng to the schooner or vessel called the Catharine, to the libel filed by Benjamin F. Butler, Esquire, attorney for the southern district of New York, in behalf of the United States of America.

This claimant and respondent, saving to himself all and all manner of advantage to the manifold uncertainties and insufficiencies in the said libel contained, for answer thereto, or so much thereof as is material and necessary for him to make answer unto, answering, saith, that he is a native citizen of the United States of America, having been born in Newburyport, in the State of Massachusetts, in which State he resided until some time on or about the month of October, in the year eighteen hundred and thirty-seven, when he removed to Havana, in the island of Cuba, where he has since continued to reside, and where he now carries on the business of a ship broker and commission agent.

And he further answering saith, that some time in or about the latter part of May now last past, the schooner Catharine, being a vessel of the burthen of one hundred and twenty-five $\frac{68}{95}$ tons, built and owned in the city of Baltimore, in the State of Maryland, and being a registered vessel of the United States, arrived in Havanna from Baltimore aforesaid, under the command of William J. Wedge, who then was, and now is, a citizen of the United States, as this respondent is informed and believes. He further saith, that the said William J. Wedge, shortly after his arrival in Havanna, called upon this respondent there, being a ship broker and commission agent as aforesaid, and stated in substance that the said William J. Wedge had been, and then was, authorized and empowered by R. W. Allen and John Henderson, citizens of Baltimore aforesaid, and the owners of the said schooner Catharine, to effect a sale thereof, and the said Wedge there and then employed this respondent to sell the said vessel.

And this respondent further answering saith, that the said William J. Wedge was in possession of a power and letter of attorney, bearing date the eleventh day of March, in the year one thousand eight hundred and thirty-nine, whereby the said R. W. Allen and John Henderson, therein described as both of Baltimore, owners of the schooner Catharine, did make, constitute, and appoint the said William J. Wedge, the master of the said schooner, their true and lawful attorney for them, and in their name to make sale and dispose of the said schooner Catharine and appurtenances, to any person or persons, to receive and give receipts for the consideration money, which the same might sell for, and to make, sign, seal, acknowledge, and deliver, as their act and deed, a bill or bills of sale therefor to the purchaser or purchasers of said schooner. Also, an attorney or attorneys, under him for that purpose, to make and substitute, and do all lawful acts requisite for effecting the premises, thereby ratifying and confirming all that their said attorney or his substitute or

substitutes should do therein, by virtue thereof, as by the said original letter of attorney in the possession of this respondent's proctor, will, reference thereto being had, more fully and certainly appear.

And this respondent further answering says, that early in the month of June, one thousand eight hundred and thirty-nine, he succeeded in effecting, as he then believed, a sale of the said schooner to the mercantile house or firm of Don Peror Mastuilla & Co., of Havanna aforesaid, for the sum of seven thousand seven hundred and fifty dollars, together with some charges, the amount whereof this respondent, without reference to his books and papers, which are in Havanna, cannot now state. That the day after this respondent had arranged the terms and conditions of the said sale he caused possession of the said schooner to be delivered to the said Don Pedro Martinez & Co., this respondent feeling assured and confident that the sale would be consummated by the payment of the consideration money, at which time, and not before, the title to the said vessel was to be transferred.

He further saith, that the principal member of the said firm, who had negotiated for and made the purchase of the said schooner for his firm, about two days after this respondent had concluded the terms of the said sale, went to Matanzas, upon business, and the said William S. Wedge, finding a vessel about to sail for Philadelphia, became extremely anxious to close the said business, and to take passage on board of the said vessel.

And this respondent further answering saith, that he was desirous of assisting and obliging the said William J. Wedge in the premises, and entertaining no doubt or apprehension of any difficulty with the said firm of Don Pedro Martinez & Co., which enjoyed the reputation of great wealth, and was of respectable standing, this respondent undertook and did actually advance to the said William J. Wedge, as the agent and on behalf of the said R. W. Allen and John Henderson, the amount of the said seven thousand seven hundred and fifty dollars, deducting this respondent's charges and expenses.

This respondent further answering saith, that in order to pay the said William J. Wedge, he purchased bills on the United States for the amount of the balance due the said Wedge, one set of which bills he delivered to the said Wedge, together with a copy of his account, and the said Wedge then sailed for Philadelphia, having previously made, executed, and delivered to this respondent his substitute, in order to enable this respondent to transfer the said schooner; which power, appointing this respondent his substitute as aforesaid, is endorsed on the original letter of attorney, made and delivered by the said R. W. Allen and John Henderson to the said William J. Wedge, and is in the words or to the effect following, that is to say:

Know all men by these presents, that I, William J. Wedge, named in the foregoing letter of attorney, by virtue of the power and au-

thority to me given in and by the said letter of attorney, do hereby make and substitute Charles Tyng, of the city of Havanna, to be the true and lawful attorney of the said R. W. Allen and John Henderson, the constituents in the foregoing letter named, to do, execute, and perform all and every thing as shall be required and necessary to be done and performed for effecting the purposes and object in the said letter of attorney contained, as fully and effectually in all respects and to all intents and purposes as I myself might or could do in virtue of this power and authority aforesaid, if personally present; hereby ratifying and confirming all and whatsoever my said substitute shall do or cause to be done by virtue hereof. In witness whereof I have hereunto set my hand and seal, at the city of Havanna, the eighth day of June, one thousand eight hundred and thirty-nine.

And this respondent further answering saith, that the said letter of substitution was duly signed, sealed, and acknowledged by the said William J. Wedge, on the day of the date thereof, before John A. Smith. vice consul of the United States in Havanna, and thereupon was delivered on the same day to this respondent, as by the said original letter of substitution will, reference thereto being had, more fully appear.

And he further saith, that the said letter of substitution was delivered to and received by him in order to enable him to control the transfer of the said vessel, and thereby to secure the payment of the advances made to the said William J. Wedge as aforesaid.

And this respondent further answering saith, that the principal member of the said firm of Don Pedro Martinez & Co. did not return from Matanzas aforesaid for about the space of ten days. When this respondent sent in the bill for the amount of the said purchase, in order to bring the same to a conclusion, that the said firm thereupon refused to complete the said purchase, alleging, as a reason, that the said vessel was not coppered with heavy copper as she had been represented to be, and that the inventory furnished to them was incorrect, and refused to accept or receive the said schooner at the price agreed upon, and wholly refused to consummate or proceed in the said sale.

And this respondent further answering saith, that so fully did he consider that the said sale had been completed and would be carried into effect that, in the interval of the absence of the said member of the firm in Matanzas as aforesaid, this respondent, at the request of another member of the said firm, effected a charter of the said schooner to John S. Thrasher, a citizen of the United States of America residing in Havanna, a copy of which charter party is hereto annexed, marked A.

And this respondent further answering saith, that finding it impossible to compel the said Don Pedro Martinez & Co. to fulfil the terms of the said sale, and to pay the amount agreed upon, without entering into a law-suit, which, in the island of Cuba, is exceedingly dilatory and expensive, your respondent made efforts to obtain another purchaser for the said schooner. That on or about the

twenty-fifth day of June, in the year one thousand eight hundred and thirty-nine, this respondent succeeded in effecting a sale of the said schooner to Don Zimon Teran, of Havana aforesaid, the terms and conditions of which sale were reduced to writing in the Spanish language, a true and correct translation whereof is hereto annexed, marked B.

And this respondent further answering saith, that previous to effecting the last mentioned agreement, he succeeded, upon an explanation of the hardships of the case, to induce the said John S. Thrasher to modify the charter aforesaid in such manner as would enable this respondent to make delivery of the said vessel at Bona on or before the first day of October, in the year one thousand eight hundred and thirty-nine. That the paper hereto annexed, marked C, is a true copy of the modification of the said charter party signed by the said John L. Thrasher.

And this respondent further answering saith, that he arranged with the said John S. Thrasher to relinquish the said charter party whenever the cargo laden in and on board of the said vessel by the said Thrasher should be landed in the island of Principe in accordance with the bill of lading, he holding the charter party and this respondent responsible for the price and sum therein stipulated in case the charter was not fulfilled up to the landing of the said cargo. That this respondent's object in making the said modification of the charter party was to enable the said vessel to proceed direct from the island of Principe to Bona, there to be delivered to the order of the purchaser. That the said John S. Thrasher loaded in, on board of the schooner, a cargo, the particulars of which are set forth in the invoice thereof, a copy of which is hereto annexed, marked D.

That Andrew L. Morrow, then the master, signed a bill of lading of the said cargo, a copy of which is hereto annexed, marked E.

That a day or two before the sailing of the said vessel, before the said Andrew L. Morrow was replaced in the command of the said schooner by Captain F. A. Peterson, the said Morrow having been taken sick.

And your respondent further answering saith, that the said schooner sailed from the Havanna, bound for the island of Principe, with the said cargo laden in and on board thereof.

And this respondent further answering saith, that he is informed and believes that some time on or about the thirtieth day of August now last past, the said schooner being at the time on the high seas, and within the jurisdiction of this court, and whilst in the prosecution of her voyage to the island of Principe aforesaid, with the said cargo in and on board thereof, was forcibly seized and taken possession of by an armed vessel or cruizer not belonging to the Government or sailing under the flag of the United States, but being a foreign vessel, called the Dolphin, and that the said foreign armed vessel, having so taken possession of the said schooner, displaced

the said Peterson, the master thereof, from the command, and having removed the crew, with the exception of two men and the said Peterson, and of the said schooner, one Robert Hamilton Dundus assumed and took command thereof, with men to serve as a crew, and that the said Dundus has brought the said schooner into the port of New York, where she now is at anchor within the waters of the southern district of New York, within the ebb and flow of the tide, and within the jurisdiction of this court; and that the said Dundus, with other persons to this respondent unknown, claims to hold, and does actually hold, and retain the possession of the said vessel and cargo, and wholly deprives this respondent of the possession thereof.

And he further sheweth, that he is informed and believes that the seizure and detention of the said schooner and cargo is attempted to be justified by the said Dundus, and by other persons aiding and abetting the said seizure and detention, upon the allegation that the said schooner was, at the time of the aforesaid seizure and detention thereof, a vessel engaged in the slave trade; and, although sailing under the American flag, was, in fact, owned by Spaniards or some person or persons not being American citizens, whereas the respondent charges the fact to be that the said schooner or vessel did not belong to any person or persons not being American citizens, but, on the contrary, was at the time held and owned by, and was under the control of, this respondent, who had the power to transfer the said vessel as hereinbefore mentioned, and who had paid the price as hereinafter stated, and who was proceeding to deliver the said vessel, as he avers he lawfully might under the aforesaid contract with the said Simon Feran, who was not, and could not, be the owner thereof until this respondent had delivered the said schooner according to the terms of his contract with the said Simon Feran, until which time this respondent submits and insists the said schooner was American property, and entitled to carry and to have the protection of the American flag.

And this respondent further answering, showeth, that it is untrue that the said schooner, at the time of the aforesaid seizure, was, or at any time before had been, or that this respondent was, or intended to, engage or employ the said schooner in the slave trade, or that he had any other object or purpose than to deliver the said vessel, according to the terms of his contract with the said Simon Feran.

And this respondent further answering saith, that the said R. W. Allen and John Henderson insist that this respondent, having alleged that he had sold the said schooner, and having actually paid the consideration money therefor, and accepted the aforesaid letter of substitution, by which he obtained the power to transfer the said schooner to whom he thought proper, and having undertaken, without their knowledge, consent, or approbation, to sell the said vessel to the said Feran, upon the terms mentioned in the said contract,

that this respondent had thereby made the said vessel his own, and had refused, and still does refuse, to refund the money paid by him to the said Wedge, as aforesaid.

And he further answering saith, that the said Simon Feran insists, that inasmuch as this respondent has failed to deliver the said vessel, in pursuance of his aforesaid contract, this respondent is bound to restore and repay the money advanced by him under the said contract, and has actually commenced a suit against this respondent in one of the courts or tribunals of Havanna aforesaid, to recover back the said money, so advanced by him, as aforesaid.

And this respondent claims and insists that he is entitled to the possession of the said schooner or vessel, and to damages for the aforesaid unlawful seizure and detention thereof.

And further saith, that the said schooner Catharine and the cargo are now forcibly held by the said Dundus and other persons, to this respondent unknown, whereby he is wholly deprived of his aforesaid vessel and her appurtenances, and wholly prevented from delivering the aforesaid cargo according to the undertaking contained in the said bill of lading, according to this respondent's contract with the said Feran.

And this respondent further answering saith, that the said schooner or vessel, in the said libel mentioned, did not become forfeited in manner and form as in the said libel is alleged; wherefore this respondent prays, that the said libel may be dismissed, and the said schooner restored to him, with all such costs, charges, damages, and expenses as have arisen, or shall or may arise, by reason of the seizure and detention of the said vessel.

F. R. TILLON,
Proctor for Respondent.
F. B. CUTTING, *Advocate.*

A.

Charter party referred to in the annexed claim.

This charter party concluded and agreed, upon this fifteenth day of June, in the year one thousand eight hundred and thirty-nine, between Charles Tyng, Esq., agent for the owners of the schooner Catharine, of the burden of 126 tons, or thereabouts, whereof Morrow is master, now lying in the port of Havanna, of the first part, and me, John L. Thrasher, of the second part, witnesseth that the said party of the first part, for, and in consideration of, the covenants and agreements hereinafter mentioned, on the part of the said party of the second part, to be kept and performed, has granted and to freight-letten, and by these presents does grant and to freight let, unto the said party of the second part, the whole tonnage of the said vessel, except as much thereof as may be necessary for the accommodation of the officers and crew, and the storage of provisions, water, and fuel, for the same, for a voyage from Havana to

isles of Principe, or other port or ports on the coast of Africa, as the agent of the charterer may direct.

And the said party of the first part, does hereby covenant and agree to and with the said party of the second part, that the said vessel, in and during the said voyage, shall be made and kept, to the best of all endeavors, and at his own proper cost and charges, tight, staunch, and strong, and sufficiently provided, tackled, and apparelled, with all things necessary for such a voyage, and that the said vessel shall be ready to receive cargo on the sixteenth instant, which shall be received and delivered from along side, within reach of the ship's tackle, at the expense of the charterer; and should the vessel need ballast during any part of this voyage, the same shall be furnished at the expense of the charterer.

And the said party of the second part, for, and in consideration of, the covenants and agreements aforesaid, does hereby covenant and agree to and with the said party of the first part, to charter and hire the said vessel for the voyage aforesaid, and to furnish and provide a full and sufficient crew for the said vessel, as also all necessary provisions, water, fuel, &c., for their maintenance during the voyage; also to pay all port charges of whatever kind or nature.

And that the said party of the second part, will well and truly pay, or cause to be paid, unto the said party of the first part, for the charter or freight of the said vessel for the voyage aforesaid, three hundred dollars per month, for the term of eight calendar months from date, and should the vessel be at sea at the end of said term, this charter shall continue until she arrives and is discharged.

And it is hereby further agreed, by and between the parties to these presents, that if the said vessel shall be detained by the said party of the second part, their factor, or agents, for any longer time than is hereinbefore allowed and agreed upon, that then the said party of the second part, agree to pay, or cause to be paid, unto the said party of the first part, for demurrage, the sum of —— pounds sterling per day, for each and every day the said vessel shall be so detained, and for the true and faithful performance of all and singular the covenants and agreements hereinbefore specified, the said parties hereby respectively bind themselves, each unto the other, and also the said vessel and cargo, in the penal sum of twelve hundred dollars.

In witness whereof, the parties to these presents have hereunto interchangeably set their signature, the day and year first above written.

CHAS. TYNG.
J. S. THRASHER.

Sealed and delivered in the presence of

B.

Contract referred to in the annexed claim.

Agreement entered into this day between Charles Tyng, agent for Messrs. R. W. Allen and John Henderson, of Baltimore, owners of the American schooner Catharine, of the burthen of one hundred and twenty-five $\frac{88}{95}$ tons, on the one part, and Don Simon Perez de Teran, of the other part, viz:

First. Don Simon P. Teran agrees to purchase the said schooner Catharine, for the sum of ten thousand dollars, provided she be delivered to him at the port of Bona, on the coast of Africa, on or before the first day of October previous.

Second. The purchaser agrees to pay, in advance, on said purchase, the sum of seven thousand five hundred dollars, and the balance he will pay in this city, to Mr. Chas. Tyng, on receiving satisfactory evidence of the delivery of the vessel at Bona, in the same good order and repair that she is now.

Third. Mr. Charles Tyng shall be at liberty to load or charter said schooner until the day of her delivery at Bona.

Fourth. Said Tyng shall refund to Don Simon P. Teran the sum advanced, in case of failure to deliver the schooner at Bona, as hereinbefore stated.

SIMON PEREZ DE TERAN.
CHAS. TYNG,
Agent for Messrs. Henderson & Allen,
owners of schooner Catharine.

HAVANNA, *June* 25, 1839.

C.

Referred to in the annexed claim.

An arrangement having been made between C. Tyng, Esq. and Don Simon Teran, that the schooner Catharine, which I have chartered for the term of eight months, from the fifteenth of June, is to be given up, at Bona, on or before the first of October next, I hereby relinquish my right to keep her, according with the terms of the charter party, after the cargo I have now on board is landed at the Isle of Principe, in accordance with the bill of lading, holding the chartering party and parties therein named responsible for the penal sum therein stipulated in case the charter is not fulfilled up to the landing of the cargo now on board.

J. S. THRASHER.

HAVANNA, *June* 25, 1839.

D. AND E.

Invoice and bill of lading.

Invoice of sundries shipped by J. S. Thrasher, on board the American schooner Catharine, Peterson master, bound to Isles of Principe, for account and risk of the shipper, being a native American citizen, and consigned to Joseph Perez, Esq.

	100 half pipes Spanish brandy	$15	$1,500 00
	175 bales leaf tobacco	13	2,275 00
	14 large hogsheads shooks	5	70 00
	10 long do. do.	3	30 00
	1 boiler for clarifying		8 4
	1,500 feet white pine boards	21	30 4
	11 pieces joist		20 00
P 1/1	4 bales Madras hdkfs. 200 dozen	10r	250 00
G 2/7	3 stamped guineas, 100 ps.	18r	225 00
8/16	3 do. blue "	26r	325 00
N 11/13	3 do. micanies, 100 ps.	18r	225 00
G 14/15	2 do. salempores	18r	225 00
A 16, 17, 19, 22, 18, 20, 21	6 blue beads, 1,450 strings	4r	725 00
G M 18	1 box containing 200 large knives	10r	20 62
	80 matchelots	5r	53 2½
P M 18	120 do.	5r	50 00
A 21	1 bale blue beads, 1,361 strings	4r	68 2
B 24/25	2 bales bengalers, 100 ps.	$3	300 00
			$6,181 03

1 box samples.

Charges.

Export duties - -	113.4
Cartage and launch hire -	98.2
Consul's, certificate -	2.0
	6,410.5
Commission 2½ per ct. -	160.2
E. E.	6,570.7

J. S. THRASHER.

HAVANNA, *June* 22, 1839.

[REC. XLVIII, J. T. 1843.]—3.

Shipped in good order and well conditioned, by J. S. Thrasher, upon the good schooner called the Catharine, whereof is master for this present voyage, Peterson, now in the harbor of Havanna, and bound for Isles of Principe, to say:

100 half pipes Spanish brandy.
14 hogsheads of tobacco.
24 do. shooks.
1 boiler.
1,500 feet boards.
11 joist.
P $\frac{1}{4}$, G $\frac{5}{10}$, N $\frac{11}{3}$, A 16, 17, 19, 22, 26.
G 14 15, 2
Bale 18, 1
A 21 1
B 24, 25 2
C M 18. 1 box. 1 samples.

One hundred half pipes Spanish brandy. Fourteen hhds. of tobacco. Twenty-four hhds. of Spanish shooks. One boiler. Fifteen hundred feet of boards. Eleven joist. Twenty-five bales, and one box merchandize, and one box samples, being marked and numbered as in the margin, and to be delivered in like good order and condition, at the aforesaid port of Isle of Principe, (the dangers of the sea only excepted) unto Joseph Perez, Esq. or to his assigns, he or they paying freight for the said goods, as per charter party, without primage and average accustomed. In witness whereof the master of the said vessel hath affirmed to four bills of lading, all of this tenor and date; one of which being accomplished the other to stand void. Dated in Havanna, the 22d day of June, 1839.

Contents unknown.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 27th day of March, 1840, Francis R. Tillon, the proctor for the above named claimant, being by me duly sworn, did depose and say, that he, the deponent, is informed and believes that the said claimant, Charles Tyng, is now absent from the United States. He further saith, that from information which he has received in regard to the matters mentioned and referred to in the foregoing claim and answer, he does verily believe that the facts therein stated are true.

S. RAPELJE,
U. S. Com'r. &c.

The replication of Benjamin F. Butler, attorney of the United States for the southern district of New York, on behalf of the said United States, to the claim and answer of the said Charles Tyng:

The said Benjamin F. Butler, attorney of the said United States for the southern district of New York, saving and reserving to himself and the said United States all benefit of exception to the uncertainties, imperfections, and insufficiencies of the said claim and answer of the said John Tyng, for a replication thereto, says that all and each of the several facts, matters, and things alleged and stated by him, the said attorney, in his said libel on behalf of the said United States, are true, and that the matters and things alleged and stated by the said Tyng, in his said claim and answer, are not true.

B. F. BUTLER,
Atty. of the United States for the southern district of N. Y.

The replication of Benjamin F. Butler, attorney of the United States for the southern district of New York, on behalf of the said United States, to the claim and answer of the said William Michael and James Foxcroft.

The said Benjamin F. Butler, attorney of the said United States for the southern district of New York, saving and reserving to himself and to the said United States all benefit of exception to the uncertainties, imperfections, and insufficiencies of the said claim and answer of the said William Michael and James Foxcroft, for a replication thereto, says, that all and each of the several facts, matters, and things alleged and stated by him, the said attorney, in his said libel, on behalf of the said United States, are true, and that the matters and things alleged and stated by the said William Michael and James Foxcroft, in their said claim and answer, are not true.

B. F. BUTLER, *U. S. Att'y*
of the United States for the southern district of New York.

July 10th, 1840—Cause tried.

Decree of District Court.

At a stated term of the District Court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the fourth day of August, in the year of our Lord one thousand eight hundred and forty. Present: Judge Betts.

THE UNITED STATES OF AMERICA,
vs.
THE SCHOONER CATHARINE, her tackle, apparel, and furniture; Charles Tyng, claimant.

This cause having been brought to a hearing upon the pleadings and proofs, and Benjamin F. Butler, Esq., United States district attorney, having been heard on the part of the libellants, and F. B. Cutting, Esq., on the part of the claimants, and due deliberation having been had in the premises, and it appearing to the court that the said vessel, when arrested, was not employed or made use of as a vessel of the United States in transporting or carrying slaves from one foreign country or place to another, within the meaning and intent of the act of Congress of May 10th, 1800; it is therefore ordered and decreed, and this court doth order and decree, that the libel be dismissed, and that the said schooner Catharine, her tackle, apparel, and furniture, be discharged from arrest, and be delivered up by the marshal to the claimant.

And it is further ordered and decreed, that the petitions of the several seamen for payment of wages for services on board the said

schooner, during the voyage in the pleadings mentioned, be dismissed—the said vessel not being under arrest thereupon, and there being no proceeds or avails in court upon which said petitions can attach.

SAM'L R. BETTS.

Appeal of the United States.

CIRCUIT COURT OF THE UNITED STATES.

THE UNITED STATES OF AMERICA, *vs.* THE SCHOONER CATHARINE, her tackle, apparel, and furniture; Charles Tyng, claimant. } Appeal.

To the honorable the Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Whereas a libel was, on the thirty-first day of December, one thousand eight hundred and thirty-nine, filed on behalf of the United States of America, by Benjamin F. Butler, attorney of the said United States for the southern district of New York, against the schooner Catharine, her tackle, apparel, and furniture, and alleging in effect as follows: That the said schooner Catharine was built at the port of Baltimore, for the purpose of carrying on trade or traffic in slaves, contrary to the act of Congress passed March 22, 1794. That the said vessel was caused to sail from some port of the United States, to carry on trade or traffic in slaves to some foreign country, contrary to the act of March, 1794. That the said vessel was built in the port of Baltimore, for the purpose of procuring from some foreign kingdom the inhabitants thereof, to be transported to some other foreign kingdom to be disposed of as slaves, contrary to the act of Congress passed March, 1794. That the said vessel was caused to sail from a port of the United States, for the purpose of procuring from some foreign kingdom the inhabitants thereof, to be transported to some other foreign country to be disposed of as slaves, contrary to the act of March, 1794. That the said schooner Catharine was employed and made use of in the transportation or carrying of slaves from one foreign port or place to another foreign port or place, contrary to the act of 1800. That the said vessel was built in a port of the United States, for the purpose of procuring negroes, mulattoes, or persons of color, from some foreign kingdom, to be transported to some other foreign kingdom to be disposed of as slaves, contrary to the act of 20th April, 1818. That the said vessel was built and prepared at the port of Baltimore, contrary to the act of April, 1818. That the said vessel was caused to sail from the port of Baltimore, for the purpose of procuring negroes, mulattoes, or persons of color, from some foreign kingdom, to be transported to some other port or place unknown,

to be disposed of as slaves, contrary to the act of April, 1818. That the said vessel was lying in the port of New York, within the jurisdiction of that court. That by reason of the premises, the said schooner Catharine, her tackle, apparel, and furniture, had become forfeited to the use of the United States.

And praying process, and that the said vessel might be condemned and sold. That the said vessel having been seized according to the prayer of the said libel, under process issuing out of the said district court, Charles Tyng filed his claim to said schooner Catharine, by which it was alleged that the said claimant was a native citizen of the United States, and went to Havanna to reside. That the said schooner Catharine arrived in Havanna from Baltimore under the command of William J. Wedge, and authorized claimant to sell said vessel for the owners, R. W. Allen and John Henderson, citizens of Baltimore; that said Wedge was in the possession of a power of attorney from said Allen and Henderson to sell said vessel; that said claimant effected a sale of said vessel to Don Pedro Martinez & Co., of Havanna, and delivered possession thereof to them; that a principal member of said firm, two days after such sale, went to Matanzas; that said claimant thereupon advanced to said Wedge the purchase money of said vessel; that said Wedge substituted the claimant as the attorney of said Allen and Henderson. That said power was given to claimant to enable him to close with the said firm for the sale of said vessel, and secure the repayment of the advances; that when said principal member of said firm returned from Matanzas, they refused to complete the said purchase; that during the absence of said member in Matanzas, claimant effected a charter, at the request of another member of said firm, to John S. Thrasher, a citizen of the United States; that claimant effected a sale of said vessel to Don Simon Teran, of Havanna; that claimant induced Thrasher to modify the charter so as to make the delivery of the vessel at Bona. That claimant arranged with said Thrasher to relinquish the charter when the cargo was landed at Principe; that Andrew T. Morrow, then master of said schooner, signed a bill of lading. That said Morrow was superseded in the command of said schooner by F. A. Peterson. That said schooner sailed from Havanna, for the island of Principe, with her cargo; that said schooner, while on the high seas, was seized by an armed vessel not belonging to the United States, called the Dolphin, and put under the command of Robert Hamilton Dundas, and brought by him into the port of New York; that the said vessel was owned by claimant; that said vessel was not engaged or intended to be employed in the slave trade; that Don Simon Teran has commenced a suit against claimant to recover back the money advanced by him to claimant; and that the said vessel had not become forfeited in manner and form as in the said libel was alleged, and praying that she be restored to the claimant, with all damages and costs incurred in the premises.

That William Michael and James Foxcroft also filed their claim to said schooner Catharine, by which it was alleged that the said Frederick A. Peterson did ship claimants as first mate and mariner, at Havanna, during her voyage to Princes' island, coast of Africa. That in pursuance thereof, claimants went on board of said schooner as mate and mariner; that said vessel was seized by the Dolphin while she was proceeding on her voyage to Princes' island. That claimants continued on board of said schooner, in such capacities, until discharged by the marshal of the southern district of New York; that claimants performed their respective duties according to the best of their ability, and are entitled to their wages; that said vessel has been libelled by the United States, and is now under the control of her officers; that claimants acted in good faith, and had a prior lien upon said vessel for their wages; and pray that their wages may be allowed and paid by the United States, and that, if necessary, process may issue, and said vessel be condemned. That said cause came on to be tried before the said district judge, on or about the tenth day of July, one thousand eight hundred and forty, upon the depositions and proofs taken in the cause, and the testimonies and proofs adduced by the respective parties.

And the said judge having advised thereon, on the fourth day of August instant, made a final decree or sentence in said cause, whereby a decree of dismissal of said libel was pronounced.

And these appellants do hereby appeal from the said final decree, and every part thereof, to the next Circuit Court of the United States, appointed to be held at the City Hall, in the City of New York, in the said southern district of New York, in the second circuit, on the last Monday of November, one thousand eight hundred and forty, and they pray that the proofs taken on the trial, before the said judge, may be certified to the said Circuit Court.

And the said libellants herein, and hereby, ask and claim to offer new proof on said appeal, and seek a new decision on the facts of the case, as they shall appear on the hearing.

Dated August 12, 1840.

B. F. BUTLER, *U. S. Att'y.*

Statement of evidence in the District Court, and also in the Circuit Court, on appeal.

CIRCUIT COURT OF THE UNITED STATES.

THE UNITED STATES,
vs.
THE SCHOONER CATHARINE, her tackle, &c., Charles Tyng, claimant.

This cause on appeal by the United States, from the decree of the District Court of the United States, for the southern district of New

ork, dismissing the libel, was heard before the Circuit Court of the United States, for the said southern district of New York, in the second circuit, on the 24th day of December, 1840. On the hearing, the following depositions were read in evidence on the part of the United States:

1st. The deposition of Robert Hamilton Dundas, examined by consent of counsel for both parties, before George W. Morton, a commissioner of this court; which deposition, with the documents annexed thereto, is in the words following:

Deposition of Robert Hamilton Dundas.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on this 23d day of June, in the year of our Lord one thousand eight hundred and forty, before me, George W. Morton, a commissioner, duly appointed by the Circuit Court of the United States, for the southern district of New York, in the second circuit, under, and by virtue of, the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," personally appeared, Robert H. Dundas, a witness for the libellants in a civil suit of admiralty jurisdiction, now depending in the District Court of the United States, for the southern district of New York, wherein the United States of America are libellants, against the schooner Catharine, her tackle, apparel, and furniture; and the said Robert H. Dundas being by me first carefully examined and cautioned, and sworn to testify the whole truth, did depose and say, That he is a mate or passed midshipman in the British navy. In the month of August last, he was serving on board Her Majesty's brigantine, The Dolphin, commanded by Lieutenant Edward Holland. On the 13th of August last, we were cruizing off Cape St. Paul's, on the coast of Africa, when we fell in with the schooner Catharine, and gave chase to her, she showed no colors; after the Dolphin had fired several shot, she hoisted American colors. They finally compelled her to heave to. Witness boarded her with a boat's crew as examining officer, and found a person by the name of Frederic Adolph Peterson in command, who represented himself as captain. Witness demanded of him, and he delivered the register, list of ship's crew, invoice of cargo, and American log book, now produced, and some other papers. In about an hour afterwards, Lieutenant Holland came on board the Catharine, when he searched the person of Captain Peterson, and found the annexed papers, marked exhibit "No. 33, G. W. M.," concealed on his person, he resisted the search, and it took several persons to hold him before he could be searched.

The Spanish log book, and the several papers in Spanish and English, now delivered to the commissioner, and by him marked

from No. 1 to No. 32 inclusive, were found on board the Catharine within half an hour after Capt. Peterson was searched; they were found in trunks and other places on the vessel. The crew consisted of eight persons, with American protection, including the captain, there were also on board about 20 or 25 foreigners, mostly Spanish and Portuguese—six or eight men would be quite sufficient to navigate the Catharine in a lawful trade. Witness came over in her with six men. They found on board a large boiler or cooking apparatus, sufficiently large to have cooked for three hundred people, a quantity of lumber which was marked, and men hired for laying a slave deck, and could easily have been put up as a slave deck in a few hours after the cargo was discharged, a number of seagers, some made up and some in shooks, (about nine were made up,) and materials for about six more, each would contain about 4 or 600 gallons. There were also found on board *also* about 570 wooden spoons, similar to those used in slave vessels. There were thirty-eight large tin dishes, and a number of small ones. The equipments above spoken of, are usually found on board of slave vessels. Witness has never seen them any where else. They found no irons, but they are generally concealed in the lower part of the vessel. All the persons found on board were landed at Quintah, with the exception of Capt. Peterson, the American mate, one American seaman, and the Spanish supercargo, named Jose Perez. Witness then took the Catharine to Sierre Leone, and laid the papers before the mixed commission court there, who refused to take jurisdiction on the ground that she was sailing under an American register and colors. Witness then, pursuant to orders, proceeded in the Catharine to the United States, and arrived at this port on the 6th of October, 1839. On his arrival here, he delivered the vessel and papers over to James Buchanan, the British consul, who placed the matter in the hands of the United States authorities. The day after their arrival at the port, Perrera, the Spanish supercargo, committed suicide.

On his cross-examination by Mr. Cutting, the counsel for the claimant, he says, that the Catharine, when they fell in with her, was about three or four miles from Cape St. Paul's, she was then steering about southwest off the land. The Dolphin was coming into the land in the opposite direction. Quintah is a port a few miles east of Cape St. Paul's, in a sort of bar. Quintah is a place usually resorted to by vessels for water and provisions, and one of the best places for provisions on the coast of Africa. The cargo corresponds with the invoice, as far as witness has seen it. The cargo is such an one as an honest trader would have on board trading with the coast of Africa. The lumber and large boiler would excite witness' suspicion. The cargo is also such an one as a slaver would have on board. There were no slaves found on board. The vessel was not in a condition to have received slaves on board until her cargo was discharged. No slave deck could have been put

up until the cargo was discharged. When Captain Peterson resisted the attempt to search his person, he was very drunk. The Spanish log book was found in the trunk of one of the Spaniards, some of the other papers last produced, were found in the trunks of some of the other Spaniards, some were found loose forward. They picked up every paper they could find. The wind was about west north-west, when they made the Catharine. They bore about north, northwest from them, distant about three or four miles. The Catharine did not alter her course after they first saw her. If in this proceeding the Catharine should be condemned, will you be entitled to any, and what, compensation as one of the captors? If the vessel had been condemned at Sierre Leone, or at any other mixed commission court, witness would be entitled to his share and proportion out of the one-half of the cargo, and four pounds ten shillings for every ton the vessel measured, as prize money. Whether he is entitled to a proportion of the proceeds of the vessel in this case, is a question of law that he is unable to decide. Witness has not done any act to relinquish any claim he may have to the proceeds of the vessel and cargo in case she is condemned, nor has he done any act to assert any claim; if he is entitled to a proportion of the proceeds, he will receive it; otherwise, not.

R. H. DUNDAS,
Mate British Navy.

Read to and subscribed by the witness, R. H. Dundas, on his examination before me, this 23d day of June, A. D. 1840.

GEO. W. MORTON,
U. S. Commissioner.

Exhibit No. 33.—*G. W. M.*

The main thing for you to do on this voyage is to be ready, in case you are boarded by a man-of-war, to show your log-book, which must be regularly kept from the time you leave here, your ship's papers, your charter party for the voyage, your ship's roll and instructions; and in that event, to take all command with your American sailors, according to your roll—all the others are to be passengers. You are to be very careful that in any cross-questions you do not commit yourself, but always stick to the same story. When the vessel is discharged, you must at once cut your register in two pieces: one piece you must enclose, direct, and send to Messrs. Thomas Wilson & Co., Baltimore; the other piece you will bring with you, and give to me when you return here. You must be very particular about that, and do not let any time pass after the cargo is out before you cut the register in two pieces, and be careful to keep them separate. Throw one piece overboard, if you are obliged to, by being boarded by a man-of-war.

(*Endorsed.*) *Exhibit No. 4.—G. W. M.*

Havanna, June 28th, 1839.

CAPT. F. A. PETERSON:

Dear Sir,—Having chartered the schooner Catharine, now under your command, for a voyage of eight months to the coast of Africa, and having put on board a cargo of goods, as per invoice enclosed, I have now to give you a few instructions relative to the course I wish you to pursue.

As soon as your vessel is ready for sea, you will proceed to the isle of Principe, and, on your arrival there, will consign your vessel and cargo to Joseph Peregra, Esq., and deliver him the certified invoice herewith enclosed. Should he wish you to proceed to any other port or ports on the coast of Africa, with or without a cargo, you will implicitly obey his instructions, as he has my full power to act as he may see fit for my interest. You will be particularly careful, however, not to receive on board said schooner any cargo that is contraband, or that is not allowed by the laws of the United States to be laden on board American vessels.

A number of persons having applied to me for passage out in the schooner, I have consented; but you will take care that their passports are in order, and that there are no circumstances attending them which will be likely to bring you in the least difficulty.

I have to request you will use all possible despatch in your business, and that you will be as economical as possible in her expenses, as I charter her by the month, and have to victual and man her.

Wishing you a pleasant voyage, I remain, truly yours,

J. S. THRASHER.

2. *The deposition of William Michael, examined in like manner, which deposition is in the words following:*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on the tenth day of January, in the year of our Lord one thousand eight hundred and forty, before me, George W. Morton, a commissioner duly appointed by the Circuit Court of the United States for the southern district of New York, in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," personally appeared William Michael, a witness for the United States in a criminal prosecution now depending in the Circuit Court of the United States for the southern district of New York, wherein the United States of America are prosecutors against Frederic A. Peterson, for an offence committed against the laws of the United States; and the said William Michael being by me duly examined, and cautioned, and sworn to testify the whole truth, did depose and say:

That he was on board the schooner Catharine, whereof Frederick A. Peterson was captain, in the month of August last, when the Catharine was captured and detained by British brigantine Dolphin. Witness was serving as mate of the Catharine. Witness entered on board the Catharine on the twenty-sixth of June last, at the Havanna. Witness entered by the name of Joseph Tucker. He entered as Ebenezer Tucker, of Salem, Massachusetts, and as a citizen of the United States. Witness first signed the articles under another captain in his true name, William Michael. Witness does not recollect the name of the first captain. Witness was born in Scotland, in the county of Galloway. He says, I entered by the name of Tucker, and as an American citizen, because I could not enter without an American protection. This was not suggested to me by Captain Peterson, because I never saw him until after I entered on board the schooner; but it was suggested to me by Mr. Warren, the shipping master, who furnished me a protection in the name of Ebenezer Tucker. The vessel sailed from the Havanna on the twenty-eighth day of June last. There was about twenty-eight or thirty persons on board the Catharine when they sailed. The majority of the persons on board were Spaniards or Portuguese, as far as I could judge from their language, which I did not understand. Witness did not keep the log-book, or a watch at night, but kept watch during the day, and kept the five persons before the mast at work. Captain Peterson kept the log-book now produced, marked A. Witness saw him writing it up every day. I do not think there was any other person on board, to my knowledge, that kept a regular log-book. Not understanding the language, he does not know whether there was any Spanish mate on board. The Spaniards or Portuguese, of whom he has spoken, used to lend him a hand in working the vessel. They were passengers, as far as I knew. Whatever Captain Peterson ordered witness to do, he did. Some of the crew were employed in making sennet. It is yarns plaited together, and is used in putting round ropes or rigging to prevent chafing. There was a good deal of it made on board; it was all used in putting round the rigging, to the best of my knowledge. Captain Peterson never told witness that the sennet was to be used for any other purpose than as before stated. As far as I know and believe, Manning and Williams, two of the crew, were American citizens. As to the rest of the crew I do not know, except as to Foxcroft, who entered under the name of Mackie. He was an Englishman born, I believe.

On his cross examination by the defendant's counsel, he says, Foxcroft had an American protection, in the name of Joseph Mackie. Mackie and witness were sent here in the Catharine by the commander of the Dolphin. The rest of the crew of the Catharine were taken out of the Catharine and put on board the Dolphin, on the coast of Africa. Witness has never seen the invoice or the cargo. He went on board just before she sailed, and after the cargo was on

board. He does not know what the cargo consisted of. The schooner had a full cargo on board. They were bound to the Island of Principe, on the coast of Africa. The island belongs to the Portuguese. Witness does not know that there was any intention of going to any other place than the Island of Principe. He did not know where they were going after that. There never was at any time any slaves on board after leaving the Havanna until he was taken by the Dolphin. They were not, during any time of the voyage, engaged in the transportation of slaves. Witness was not, during any part of the voyage, engaged in the slave trade, nor was the vessel or the rest of the crew. Witness did not ship for the purpose of, or with the intention of, engaging in the slave trade. The vessel was not, during any part of the voyage, in a situation to have received slaves on board without having first discharged her cargo. We were about five miles from Quintah when the Dolphin boarded us. We were short of water and provisions, and had put into Quintah for supplies. We left Quintah, and were prosecuting the voyage to Principe, when we were boarded by the Dolphin. We put into Quintah about four o'clock in the afternoon, and got under way for Principe the next morning about ten o'clock, and were captured the same morning. No part of the cargo, to witness's knowledge, was landed at Quintah, and we took nothing on board but wood, water, and fresh provisions.

W. MICHAEL.

Read to and subscribed by the witness William Michael, on his examination before me, the 10th day of January, 1840.

GEO. W. MORTON, *U. S. Com'r.*

3*d*. *The deposition of James Foxcroft, examined in like manner, which deposition is in the words following:*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered that on this eleventh day of January, in the year of our Lord one thousand eight hundred and forty, before me, George W. Morton, a commissioner, duly appointed by the Circuit Court of the United States for the southern district of New York, in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," personally appeared James Foxcroft, a witness for the defendants in a criminal prosecution now depending in the Circuit Court of the United States for the southern district of New York, wherein the United States are prosecutors, against Frederic A. Peterson, for an offence committed against the laws of the United States; and the said James Foxcroft, being by me duly examined, and cautioned, and sworn to testify the whole truth, did depose and say, that he was on board the schooner Catharine, whereof Frederic Peterson was captain, in

the month of August last, when the Catharine was captured by the Dolphin. Witness was a seaman on board the Catharine, shipped at Havanna by the name of Joseph Mackie; his name is on the articles as Joseph Mackie. Witness had an American protection at the time he shipped. Captain Peterson knew nothing of witnesses shipping by a wrong name, as he never saw witness until he went on board. The Catharine sailed from the Havanna about the 28th of June last, bound on a trading voyage to the Portuguese islands. The first place they were bound to, as he understood, was to the Island of Principe. The schooner had a full cargo on board. Witness does not know what the cargo consisted of. There never was, from the time they sailed from the Havanna until they were captured by the Dolphin, any slaves on board the Catharine; neither was the Catharine, or any person on board, during any part of the voyage, engaged in the transportation of slaves, or in the slave trade. Witness did not ship on board the Catharine for the purpose of, or with the intention of being engaged in the slave trade. There was not, to witness's knowledge, any such purpose or intention on the part of any on board the Catharine. The *captain* was not, during any part of the voyage, in a situation to have received slaves on board, without first discharging her cargo. The hold was full of cargo. When the Dolphin boarded them they were about five miles from Quintah. They put into Quintah for the purpose of replenishing their stock of wood, water, and provisions. They were short of wood, water, and provisions. They put into Quintah in the afternoon of one day, and sailed from thence the next morning, after obtaining their supplies. They were captured by the Dolphin the same morning they left Quintah. They were then prosecuting their voyage to the Island of Principe. No part of the cargo was landed at Quintah. They took on board nothing but wood, water, and provisions at Quintah. Captain Peterson, Michael, and myself, were sent to New York, by orders of the captain of the Dolphin. The rest of the crew of the Catharine were landed at Quintah, by orders of the captain of the Dolphin. Witness does not know what has become of those men since. JAMES FOXCROFT.

On his cross examination by the district attorney. The reason of his shipping under a wrong name was, because he could not ship on board an American vessel without an American protection, and there was no other vessel in which he could ship. I am not an American citizen, but a British subject. The American protection was given to me by the shipping master at the Havanna.

JAMES FOXCROFT.

Read to and subscribed by the witness, James Foxcroft, on his examination before me, January 11, 1840.

GEO. W. MORTON, *U. S. Com'r.*

January 23, 1840.

The witness being called and examined on the part of the United States, and being asked whether he was engaged to a considerable

extent, while on board the Catharine, in making sennet, and if so, under whose direction? (obj. to.) He says, it was under the direction of the boatswain yeoman. Did any person on board, and if so, when, tell you what was to be done with that sennet? (obj. to.) The boatswain yeoman told me it was to be used in tying slaves. Can you form any estimate of the quantity of sennet made on board? He says he cannot, but it was a very great quantity. They commenced making sennet ten days or a fortnight after leaving the Havanna. There were several besides witness engaged in making the sennet. There was more sennet made than was necessary for the use of the vessel, in witness's opinion. How much more? I cannot state what quantity was made; there was so many engaged in making it.

On his cross-examination. What is sennet, and how is it made? It consists of a number of ropes platted together. It is used for a variety of purposes; among others, for rounding rigging and preventing chafing; some of the sennet was used on board of the Catharine for putting around the rigging. Excepting what the boatswain yeoman told you, have you any personal knowledge that sennet is used for tying slaves? He says he has not. Was there any sennet on board the Catharine unused at the time the Dolphin captured her? If so, how much? And what has become of it? There was a good deal on board, and still remains on board. As near as I can judge, there was about one hundred fathoms on board unused when the Dolphin captured her; part of it has been used to prevent chafing on the passage to New York.

On further direct examination. The boatswain yeoman is an officer under the boatswain, and has charge of the rigging.

JAMES FOXCROFT.

Read to and subscribed by the witness, James Foxcroft, on his examination before me, the 23d day of January, 1840.

GEO. W. MORTON, *U. S. Com'r.*

The district attorney also produced and gave in evidence, on the part of the United States, the register, log books, papers, and documents referred to in the deposition of Robert Hamilton Dundas, and found by him on board the Catharine, the contents of which, or a summary thereof, are as follows:

REGISTER.—(*Endorsed.*) *Register G. W. M.*

No. 61, sixty-one.—Permanent.

Register of vessels, United States.

In pursuance of an act of the Congress of the United States of America, entitled An act concerning the registering and recording of ships or vessels, Robert W. Allen and John Henderson, of Baltimore, State of Maryland, having taken or subscribed the oath required by the said act, and having sworn that they are the only owners of the ship or vessel called the Catharine, of Baltimore, whereof William S. Wedge is at present master, and is a citizen of

the United States, as he hath sworn, and that the said ship or vessel was built in Baltimore, aforesaid, during the present year, 1839, as appears by the master carpenter's certificate on file in this office.

J. H. W. COLLOHY, *Col'tr.* [L. S.]

And James Mosher, surveyor of this port, having certified that the said ship or vessel has one deck and two masts, that her length is eighty-nine feet four inches, her breadth twenty feet two inches, her depth seven feet eight inches, and that she measures one hundred and twenty-five tons $\frac{68}{95}$; that she is a schooner, has a square stern, no galleries, and a woman bust-head; and that the said owners having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said schooner has been duly registered at the port of Baltimore.

Given under our hands and seals, at the port of Baltimore, this 10th day of May, in the year one thousand eight hundred and thirty-nine.

Test: A. T. SMITH, *Register.* [L. S.]
JOHN CLARK, [L. S.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Havana, June 5th, 1839.

Andrew Marrow has taken the oath required by law, is at present master of the within named vessel, in place of William S. Wedge, late master.

J. A. SMITH, *Vice Consul.*

CONSULATE OF THE UNITED STATES OF AMERICA,
June 28th, 1839.

Frederick A. Peterson has taken the oath required by law, is at present master of the within named vessel, in place of Andrew Marrow, late master.

J. A. SMITH, *V. Counsel.*

(*Endorsed.*) "*No.* 1.—*G. W. M.*"

SHIPPING ARTICLES.

No ardent spirits allowed on board.

It is agreed between the master seamen or mariners of the schooner Catharine, F. A. Peterson, master, (or whoever else may be master,) now in the port of Havanna and bound for the isle of Principe, or to trade to other ports on the coast of Africa, for a voyage not to exceed eight calendar months: That in consideration of the monthly or other wages against each respective seaman or mariner's name hereunder set, they severally shall and will perform the above-mentioned voyage; and the said master doth severally agree with and hire the said seamen or mariners for the said voyage, at such monthly wages or price, to be paid pursuant to this agreement and the laws of the Congress of the United States of America,

and the custom and usage in the port of Baltimore. And they, the said seamen or mariners, do hereby promise and oblige themselves to their duty, and obey the lawful commands of their officers on board the said vessel, or the boats thereunto belonging, as become good, faithful seamen or mariners; and at all places where the said vessel shall put in or anchor at, during the said voyage, to do their best endeavors for the preservation of the said vessel and cargo, and not to neglect or refuse doing their duty by day or night; nor shall go out of the said vessel on board any other vessel, or be on shore under any pretence whatsoever, until the above said voyage be ended, and the vessel discharged of her loading, without leave first obtained of the captain or commanding officer on board. That in default thereof, they will be liable to all the penalties and forfeitures mentioned in the marine law enacted for the government and regulation of seamen in the merchants' service, in which it is enacted "that if any seaman or mariner shall absent himself from on board the ship or vessel, without leave of the master or officer commanding on board, and the mate or other officer having charge of the log-book shall make an entry therein of the name of such seaman or mariner, on the day on which he shall so absent himself; and if such seaman or mariner shall not return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days' pay for every day which he shall so absent himself, to be deducted out of his wages. But if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all the wages due to him, and all his goods or chattels which were on board the said ship or vessel, or in any store where they have been lodged at the time of his desertion, to the use of the owners of the ship or vessel, and moreover shall be liable to pay to him or them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place."

And it is further agreed by both parties, that each and every lawful command which the said master shall think necessary hereafter to issue, for the effectual government of said vessel, suppressing immorality and vice of all kinds, be strictly complied with, under the penalty of the person or persons disobeying forfeiting his or their whole wages or hire, together with every thing belonging to him or them on board said vessel.

And it is hereby understood and mutually agreed, by and between the parties aforesaid, that they will render themselves on board the said schooner on or before the twenty-third day of June, 1839.

And it is further agreed on, that no officer or seaman belonging to the said vessel shall demand or be entitled to his wages, or any part thereof, until the arrival of the said vessel at the above-mentioned port of discharge, and her cargo delivered.

And it is hereby further agreed, between the master and officers of the said vessel, that whatever apparel, furniture, and stores, each of them may receive into their charge belonging to said vessel,

shall be accounted for on her return; and in case any thing shall be lost or damaged, through their carelessness or insufficiency, it shall be made good by such officer or seaman by whose means it may happen, to the master or owners of said vessel. And whereas it is customary for the officers and seamen, on the said vessel's return home in the harbor, and whilst her cargo is delivering, to go on shore each night to sleep, greatly to the prejudice of such vessel and freighters, be it further agreed by the said parties, that neither officers nor seamen shall, on any pretence whatsoever, be entitled to such indulgence, but shall do their duty by day in discharging of the cargo, and keep such watch by night as the master shall think necessary to order, for the preservation of the above. And whereas it often happens that part of the cargo is embezzled after being safely delivered into lighters, and as such losses are made good by the owners of the vessel, be it therefore agreed by these presents, that whatever officer or seaman the master shall think proper to appoint, shall take charge of her cargo in the lighters, and go with it to the lawful quay, and there deliver his charge to the vessel's husband or his representative, or *to* see the same safely landed. that each seaman or mariner who shall well and truly perform the abovementioned voyage—provided always that there be no plunderage, embezzlement, or unlawful acts committed on the said vessel's cargo or stores—shall be entitled to the payment of the wages or hire that may become due to him, pursuant to this agreement, as to their names are severally affixed and set forth. That for the due performance of each and every of the abovementioned articles and agreements, and acknowledgment of their being voluntary and without compulsion, or any other clandestine means being used, agreed to and signed by us.

In testimony whereof, we have each and every one of us under affixed our hands, the month and day against our name, as here under written.

Time of entry.	Names.	Stations.	Place of residence.	Advance wages.
June 26th.	Tobie Tucker	Mate	Salem	$35 00
Do do	Joseph Mackie	Seaman	Portland	15 00
Do do	William Manning	Do	Baltimore	15 00
Do do	James Williams	Do	Baltimore	15 00
Do do	his John ⋈ Francis mark	Do	New Orleans	15 00
Do do	his Henry ⋈ Elliott mark	Do	Feroners	15 00

Charter party—endorsed G. W. M., No. 2—being the same document marked A, and subjoined to the claim and answer of *Charles Tyng*, hereinbefore contained.

Bill of Lading.

(Endorsed) No. 3.—G. W. M.

Shipped in good order and well conditioned, by J. S. Thrasher, upon the good schooner called the Catharine, whereof is master for this present voyage, Babson, now in the harbor of Havanna, and bound for Isles of Principe, to say: One hundred half pipes Spanish brandy, fourteen hogsheads tobacco, twenty-four hogsheads shooks, one boiler, fifteen hundred feet boards, eleven joist, twenty-five bales and one box merchandise, and one box samples; being marked and numbered as in the margin; and are to be delivered in the like good order and condition at the aforesaid port of Isles of Principe, (the dangers of the seas only excepted,) unto Joseph Peregra, Esq., or to his assigns—he or they paying freight for the said goods, as per charter party, without primage and average accustomed. In witness whereof the master of the said vessel hath affirmed to four bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void. Dated, Havanna, the 27th day of June, 1839.

Contents unknown to FRED. ADOLPH. PETERSON.

(*Endorsed*) "*Crew List B.—G. W. M.*"

CONSULATE OF THE UNITED STATES OF AMERICA, *Havanna.*

John A. Smith, vice consul of the United States of America, do hereby certify that, on the day of the date hereof, before me personally appeared Frederick A. Peterson, now master of the schooner Catharine, of Baltimore, who declared that document hereunto attached is a true and correct list of the crew, (six persons all told,) not including himself.

In testimony whereof, I hereunto set my hand and affix my seal of office, at Havanna, this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-third. J. A. SMITH.

[L. S.]

List of persons now comprising the crew of the schooner Catharine of Baltimore, whereof Frederick A. Peterson is now master, bound to Isle de Principe:

Names.	Place of birth.	Residence.	Of what country citizens or subjects.	Age.	Height.	Complexion.	Hair.
Eban Tucker	Salem	Massachusetts	United States	33	5 ft. 9	light	brown.
Jos. Mackie	Portland	Portland	do.	21	5 " 4	do.	do.
W. Manning	Baltimore	Baltimore	do.	20	5 " 4½	do.	light.
Jas. Williams	New Orleans	New Orleans	do.	41	5 " 5	dark	dark.
John Francis	Italy	Havanna	Italy	42	5 " 7	do.	do.
Henry Elliot	Malaga	do.	Spaniard	18	5 " 2	do.	do.

HAVANNA, *June* 28, 1839. F. ADOLPH. PETERSON.

(*Endorsed*) "*Invoice of Cargo C.—G. W. M.*

CONSULATE OF THE UNITED STATES OF AMERICA.

I, John A. Smith, vice counsel of the United States of America, do hereby certify that, on the day of the date hereof, before me personally, John J. Thrasher, at present in this city of Havanna, who being by me duly sworn, did declare that he is a citizen of the United States of America, and is to me well known as such, and is the only shipper of goods on board the schooner Catharine of Baltimore, as appears by the annexed invoice.

In testimony whereof, I hereunto set my hand and affix my seal of office, at Havanna, this twenty-second day of June, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-third.

J. A. SMITH, [L. S.]

Invoice of merchandise shipped by J. S. Thrasher, on board the American schooner Catharine, Peterson master, bound for Isles of Principe, for account and risk of the shipped, being a native born citizen of the United States of America, and consigned to Joseph Peregra, Esq.

100 half pipes Spanish brandy *a* $15 -	$1,500 00		
14 hhds. cont'g. 175 bundles tobacco *a* $13	2,275 00		
14 large hhds. shooks *a* $5 - -	70 00		
10 do. do. do. *a* $3 - -	30 00		
1 boiler for clarifying - - -	8 4		
1,500 feet of white pine boards *a* $0.21 -	30 4		
11 pieces joist - - - -	20 00		
4 bales Madras hdkfs. 200 doz. *a* 70 rs.	250 00		
3 stamped Guineas, 100 ps. 18 yds. *a* 10 rs. - - - -	125 00		
3 bales blue Guineas, 100 ps. *a* 26 r. -	325 00		
3 Nicarnies, 100 ps. *a* 18 r. -	325 00		
½ cont'g. 1,450 strings blue beads, *a* 4 rs. - - - -	725 00		
1 box cont'g 200 large knives, *a* 10 rs. doz.	20	6½	
80 muskets, *a* $5 - -	33	8½	
2 bales cont'g 100 ps. salempares, *a* 10 rs.	125 00		
1 bale 120 do. *a* $5 doz.	50 00		
1 bale 136⅓ strings beads, *a* 4 rs. -	68 02		
2 bengalus, 100 ps. *a* $3 - -	300 00		
			$6,181 03
1 box samples			
Charges. Export duties - - - -	113 4		
Cartage and launch hire - -	98 2		
Cooperage, sewing bales, &c. - -	15 4		
Consul's certificate of property -	2 00		229 2
			6,410 5

Brought forward,	$6,410	5
Commissions 2½	160	2
	$6,570	7

E. E. J. S. THRASHER.

HAVANNA, *June* 22, 1839.

(Endorsed.)—No. 5, G. W. M.

United States of America.

[No. 131.]

I, J. H. McColloh, deputy collector of the port of Baltimore, do hereby certify, that William Manning, an American seaman, aged nineteen years or thereabouts, of the height of five feet four and a half inches, having a light complexion, light blue eyes, light hair, has a scar on the lower joint of the left thumb, and a scar on the lower end of his left hand near the wrist, has this day produced me proof, in the manner directed in the act entitled "An act for the relief and protection of American seamen," and, pursuant to the said act, I do hereby certify that the said William Manning is a citizen of the United States of America.

In witness whereof, I have hereunto set my hand and seal of of-
[L. S.] fice this twentieth day of June, in the year one thousand eight hundred and thirty-eight.

J. H. McCOLLOH, *Collector.*

Endorsed No. 6, *G. W. M.*

(Endorsed.)—No. 6, G. W. M.

United States of America, State of South Carolina.

[No. 304.]

COLLECTOR'S OFFICE, *District of Charleston.*

I, James R. Pringle, collector of the District of Charleston, do hereby certify that Joseph Mackie, an American seaman, aged fifteen years or thereabouts, of the height of five feet four inches, born in Portland, State of Maine, light complexion, grey eyes, brown hair, no scars or marks, has this day produced to me proof, in the manner directed in the act entitled "An act for the relief and protection of American seamen," and, pursuant to the said act, I do hereby certify that the said Joseph Mackie is a citizen of the United States of America.

In witness whereof, I have hereunto set my hand and seal of
[L. S.] office this fifteenth day of March, 1833, and in the fifty-seventh year of American independence.

J. R. PRINGLE.

(Endorsed.)—No. 7, G. W. M.

United States of America.

[No. 286.]

I, John Chandler, collector of the district of Portland and Falmouth, do hereby certify that Ebenezer Tucker, an American seaman, aged twenty-eight years or thereabouts, of the height of five feet ¾ inches, light complexion, brown hair, has a scar over his right eye, born in Salem, in the State of Massachusetts, has this day produced to me proof, in manner directed by the act entitled "An act for the relief and protection of American seamen," and, pursuant to the said act, I do hereby certify that the said Ebenezer Tucker is a citizen of the United States of America.

In witness whereof, I have hereunto set my hand and seal of
[L. S.] office this fourth day of November, in the year of our Lord 1834.

JOHN CHANDLER, *Collector.*

(Endorsed.)—No. 8, G. W. M.

Protection.

[No. 5608.]

PORT AND DISTRICT OF SAVANNAH.

I, John Stevens, collector of the district of Savannah, do hereby certify that James Williams, an American seaman, aged twenty-nine years or thereabouts, of the height of five feet five inches, born in New Orleans, State of Louisiana, of dark complexion, dark eyes, dark hair, has this day produced to me proof, in the manner directed in the act entitled "An act for the relief and protection of American seamen," and, pursuant to said act, I do hereby certify that the said James Williams is a citizen of the United States of America.

In witness whereof, I have hereunto set my hand and seal of
[L. S.] office this sixth day of December, one thousand eight hundred and thirty-one.

N. H. OLMSTEAD, *D'y Collector.*

(*Endorsed.*)—*No.* 9, *G. W. M.*

It is mutually agreed between F. A. Paterson and Joseph Peregra, the former master, and the latter supercargo, of the schooner Catharine, of Baltimore, now bound on a voyage to the coast of Africa, that said F. A. Paterson shall go out master of said schooner, on her present voyage, for the sum of one hundred dollars per month, and three hundred dollars gratification, and the wages to continue until his return here, should he return in the vessel, or any other vessel belonging to the house for which J. Peregra is agent; but should said Paterson wish to leave the vessel on the coast, said Peregra binds himself hereby to pay unto said Paterson, three hun-

dred dollars gratification, and his wages up to the day he leaves the vessel, less one hundred dollars, received here as one month's advance.

JOSE PEREGRA.

HAVANNAH, *June* 28, 1839.

(*Endorsed.*)—*No.* 10, *G. W. M.*

Don Jose Perez Santin, intendente de Provincia, honora rio comisario de guerra, effectivo de primera clase de hos Reales Ejerutos, y administrador general de rentas reales maratimas de esta Capital, par S. M. &c.

Certifico que con intervencion del Sr. intendente de Provincia, honorario contador principal de esta real aduana, D. Tomas Rodrigues de Yurre, se hasa embarcado, en la Gra am're Catherine, Cap'ne Wedg, condestino a la Ysla del Principe, lo sequiente D. C. Tyng, venite y encetro bulsos del deponto, uenso sesenta y unco medot tabuco, cien cualerolus de gurdeo-de-cana, y efedos desaveta. Habana, y Juno y venite y uns, de mil ocho S. trenitu y uneve.

JOSE PEREZ SANTIN.

Nota: que u alrio este regista p'a aramental loque signe, D. Carlos Ting, catore venilet, y de 'erio cigarros, alatidos, dos coneley, ires pi'pas, velu cigarros, cuicuar terolus con aqua para ci ue regreto truelos un otros liquidos, mil quinientos pces devablay y ochee alfarde y pa barrucas, y un caldero para clarifica. Habana, y Junci venite y dos, de mil oclionentos trenitu y uneve.

SANTIN.

[Translation annexed.]

Translation of No. 10.

[L. S.] Don Jose P. Santin, intendant of the Province, commissary of war, effective of the first class of the Royal Army, and administrator general of the royal maritime rents of this Capitol, under Her Majesty, &c.

I certify that with the knowledge of the intendant of the Province, and the principal and honorary accountant of this royal custom-house, Don Thomas Rodreges de Yurre, there has been shipped, in the American schooner Catharine, Captain Wedg, bound to the island of Principe (Isla del Princepe,) the following, by Don C. Ting, twenty-four packages from the deposite or depot, one hundred and sixty-five round bales or bundles of tobacco, one hundred quarter casks of sugar-cane brandy, and provisions. Havana, June 21, 1839.

(Signed) JOSE PEREZ SANTIN.

NOTE.—This pass or permit is opened to add the following, Don Charles Ting, fourteen casks and 10,000 cigars, loose, two casks,

three pipes, and 8,000 of cigars, six quarter casks containing water, to be brought on their return filled with other liquors, one thousand five hundred feet of boards and eight pieces of timber, for building storehouse, and one caldron for clarifying. Havana, June 22, 1839.

(Signed) SANTIN.

[Translated by Ed. Platt Crosby, 26 Beekman street, New York.]

No. 11, G. W. M., is a book in the Spanish language, containing nautical calculations for each day, from the 16th of April, 1839, to the 19th August, 1839, inclusive.

No. 12, G. W. M., is another book in the Spanish language, containing like daily calculations, from the 30th of June, 1839, to the 10th of August, 1839.

No. 13, G. W. M., is another book in the Spanish language, containing like daily calculations, from the 14th of July, 1839, to the 11th of August, 1839.

No. 14, G. W. M., is another book in the Spanish language, containing like daily calculations, from the 15th of August, 1838, to 31st December, 1838; and, also, like calculations for several days in March, 1839.

(*Endorsed.*)—*No.* 15, *G. W. M.*

Capte. Jose Peregra,
Pilota Esteve Barbete,
Tercerto Jose Sanchez,
Contran'lar Franco Torres,
Grand'u Jose Vemer,
Tenelero Juan Bargos,
Counero Domingo Bernal,
Marinerros Juan Francisco,
Berner Pullera,
Damien Legue,
Juan Bantista,
Jose Santos,
Estevan Pamant,
Juan Gonralis,
Anto. Sanches,
Moros Diego Juxmenegilo,
Domingo Torres,
Juan Anto. Moroto,
Bartolome Mulat,
Anto. Paredes,
Roque Zepoor,
Anto. Teube,
Malachi Antonio Loper,
Cap'n Carlos Salvini,
Negro.

(*Endorsed,*) *No.* 16, *G. W. M.*

Diego yo Domingo Jornal que he salido contrate de con la placei de colinero ganado unuento y arinto fr. erron de duo destino al companno Jose Santos sequn combinio de ambos desputande est de mi sueldo y yo del sugo de companero que para los fines que combengan firmmot ambos antes Ter Testigos Abordo del espresado en la Mar 15, de Julio de 1839.

Por no saber firma,
por Domingo Journal,
JOSE SANCHES,

Jose Santos,
Antonio Paredos,
Juan Bargos,
Bernedo Covers.

(*Endorsed,*) *No.* 17, *G. W. M.*

(*See original.*)

No. 18 to No. 32, G. W. M., both inclusive, are letters and other papers in the Spanish or Portuguese language, several of which are addressed to Jose Peregra, but the contents of which are not deemed material.

Exhibit marked A, January 16th, 1840. *G. W. M.*

Log-book of the schooner Catharine, of Baltimore, produced and testified to by Robert H. Dundas, on his examination before me, this 23d day of June, A. D. 1840, in the libel suit of the United States *vs.* the schooner Catharine.

G. W. MORTON, *U. S. Com'r.*

Schooner Catharine, from Havanna to Prince's Island, Peterson, Master.

H.	K.	Course.	Winds.	Lw.	Remarks on board, Tuesday, July 2d, 1839.
1	6	NEbyE.	SE.		Commenced with fine breeze
2	6				and cloudy weather, with squalls
3	6				and rain; took in square-sail and
4	6				top-gallant-sail; freshening at af-
5	7				ternoon, fast topsail and flying
6	6				jib, took the bonnet off the topsail
7	8				and reefed the mainsail.
8	8				This 24 hours, fresh breezes
9	7	4			and squally; at daybreak, a little
10	7	4			moderate, set flying jib and top-
11	7				sail.
12	7				
1	7				
2	7				
3	8				
4	8				
5	7	4			
6	8				
7	8	4			
8	9				
9	9	ENE.			
10	9				
11	8	4			
12	8				

Variation, 3° east.
Course, NEbyE½E.
Dept. 180.
Dept. 157 4

No observation.
Lat. D. R. 29° 52′
Long. do. 76° 4′

Here follow daily observations in like manner, for each day, until the 8th August, 1839, which it is not thought material to insert.

Schooner Catharine from Havana towards Prince's Island.

H.	K.	F.	Courses.	Winds.	Lw.	Remarks on board.
1	7		SE½E	SSW	¼	This 24 hours, a fresh breeze
2	7					and cloudy weather throughout.
3	7					At 8 o'clock, kept away EbyS,
4	6	4				set all sails which would draw to
5	6	4				the best advantage.
6	7	4				Thick and heavy weather.
7	7	4	SEbyS	SWbyS		
8	7	4				
9	7	4				
10	7	4				
11	7	4				
12	7	4				
1	7					
2	7					
3	6	4				
4	6	4				
5	5	4				
6	5					
7	6					
8	4	4				
9	9		EbyS			
10	9					No observation.
11	9					
12	9					

H.	K.	F.	Course.	Winds.	Lw.	Remarks on board, Friday, Aug. 9th, 1839.
1	8		ESE¼E	SW		This 24 hours, a fresh breeze
2	8					and cloudy weather. At 8 P. M.
3	8					struck soundings with 50 fathom
4	8					line, and muddy grey sand, short-
5	7	4				ened sail and stood upon the wind
6	7	4				to the southward; sounded every
7	8		ESE			4 hours with nearly the same dep.
8	7					At daybreak saw the land; at 9
9	3	4	SEbyS			o'clock, A. M. Cape Palmer, bear-
10	3	4				ing north, turn bearing north
11	2		South	WSW		about 10 miles distant from where
12	2					we took our departure. A fresh
1	2					breeze and heavy weather.
2	2					
3	2					
4	2					
5	2					
6	2					
7	8	4				

H.	K.	F.	Course.	Winds.	Lw.	Remarks on board, Friday, Aug. 9th, 1839.
7	8	4	ESE	SW		
8	7	4				
9	8		ESE¼S			
10	8					
11	8					
12	7					

Variation 17° NW.
Course SEbyE¾E.
Dist. 16° 3′
Dep. 148 9/10
Lat. Dr. 4° 14′
Long. Dr. 11° 24′

Variation 18° NW.
Course EbyS.
Dist. from bearing 23′
Depart. 22° 7′
No observation.
Lat. D. R. 4′ 8″
Long. Dr. 7° 22′

Schooner Catharine from Havanna towards Prince's Island.

H.	K.	F.	Courses.	Winds.	Lw.	Remarks on board, Saturday, Aug. 10, 1839.
1	7		SEbyE½E	SW		This 24 hours a stiff breeze and
2	7					cloudy weather throughout. A
3	7					heavy swell from the southwest.
4	7					Set the squaresail.
5	8					
6	8					
7	8					
8	8					
9	9		SEbyE	SSW		
10	9					
11	9					
12	9					
1	8	4				
2	8	4				
3	9					
4	9					
5	9		ESE	SW		
6	9					
7	8	4				
8	8	4				
9	8	4				
10	8					
11	8					
12	8					

Variation, 18° NW.
Course, E¾S.
Dist. 198′.
Depart. 195 9/10.
Sub. obs. 4° 6′.
Sub. D. R. 3° 34′.
Long. Dr. 4° 6′.

Schooner Catharine from Havanna towards Prince's Island.

H.	K.	F.	Courses.	Winds.	Lw.	Remarks on board, Sunday, Aug. 11, 1839.
1	7		SEbyE½E	SW		The first part of this 24 hours a fresh breeze and cloudy weather, and rain at times. Latter part variable and light breezes, with heavy weather.
2	7					
3	8					
4	8					
5	8					
6	8					
7	5					
8	4					
9	7	4				
10	7	4				
11	7					
12	7					
1	7		WSW			
2	7					
3	6	4				
4	6	4				
5	5	4				
6	5	4				
7	5					
8	4	4				
9	4					
10	4					
11	3	4				
12	3	4				

Variation, 18° NW.
Course, EbyS.
Dist. 147′.
Depart. $144\frac{8}{10}$.
Lat. obs. 3° 47′.
Lat. D. R. 3° 41′.
Long. D. R. 1° 42′.

Schooner Catharine from Havanna towards Prince's Island.

H.	K.	F.	Course.	Winds.	Lw.	Remarks on board, Monday, Aug. 12, 1839.
1	5		NE	WSW		The first part of this twenty-four hours a fine breeze and cloudy weather. Latter part a fresh breeze and hazy weather. At daylight saw the land N.N.E. by compass. The current setting about 2 miles an hour in an E.S.E. direction.
2	5					
3	5					
4	5	4				
5	6					
6	6					
7	6					
8	6					
9	6					
10	6					

H.	K.	F.	Course.	Winds.	Lw.	Remarks on board, Monday, Aug. 12, 1839.
11	6					
12	6					
1	5					
2	5					
3	5					
4	5					
5	8		NNE			
6	6		N			
7	8	4				
8	8	4				
9	6		EbyS			
10	6					
11	6					
12	6					

Variation, 19° NW.
Course, NNE¾E.
Dist. 130′.
Dep. 65° 00′.
Lat. obs. 5° 34′ N.
Lat. D. R. 5° 40′.
Long. D. R. 0° 36′ W.
By bearing off Cape St. Paul's 0° 58′ east.

Spanish log-book produced and testified to by Robert A. Dundas, on his examination before me, this 23d day of June, A. D. 1842.

G. W. MORTON, *U. S. Com'r.*

Del viernes 28 *al Sabado*, 29 *Junio*, 1839.

H.	M.	D.	Rbos. Vtos.	A.	Var'on. N 2° 7′. Aceuntos.
1	0	0			A lay 7 se mares el marro de la
2	0	0			Habana, N. 17 E. corregido do do
3	0	0			4 ms. cuijos datos me situan en lo
4	0	0			St. N. 23—15 y Longd e del mo di
5	0	0	Marcanion,		Cadiz de 75.28. A las 8 de marse el
6	0	0	Ma vela.		Pau de Matamoras al S. 20 E. del
7	0	0	N 47° 6′ ESE	5°	compas d'ta. de. 18 a 20 ms. cuijos
8	3				datos me situan en la lat'd N. 23,
9	3	1			20 y long°. o del m°. de Cadis de
10	1	5			79° 24′ Al mo dia se marco el Pau
11	0	0			de Mat. al S 3° 0′ del compas con
12	4				cuija Marc'n y la lat ob'n. de 23°
1	0	0	Sengos calm.	00	40′ me situa en la long'e. 0, del
2	0	0	NE¼E ESE.	5°	mo. de Cadis de 75.10′.
3	1	4			
4	2	3			
5	1	3			

H.	M.	D	Rbos. Vtos.	A.	Aceuntos.
6	1	3			
7	2				
8	4		Mar'en.		
9	4	2	NE¼E ESE.	5°	
10	3	0			
11	2	4			
12	1	0			

Here follow daily observations in like manner, in Spanish, to the 12th of August, 1839.

On the foregoing evidence, the case was rested on the part of the United States.

On the hearing, it was admitted by the attorney of the said United States, that the said Charles Tyng is a citizen of the United States, having been born in Newburyport, in the State of Massachusetts, in which State he resided until some time in or about the month of October, in the year eighteen hundred and thirty-seven, when he removed to Havana, in the island of Cuba, where he has since continued to reside, and where he now resides, and carries on the business of a ship broker and commission agent.

That sometime in or about the latter part of May, in the year one thousand eight hundred and thirty-nine, the schooner Catharine, being a vessel of the burthen of one hundred and twenty-five $\frac{68}{95}$ tons or thereabouts, built and owned in the city of Baltimore, in the State of Maryland, and being a registered vessel of the United States, arrived in Havana, from Baltimore aforesaid, under the command of William S. Wedge, who then was, and now is, a citizen of the United States.

That the said William S. Wedge, shortly after his arrival in Havana, called upon the said Charles Tyng, then being a ship broker and commission agent as aforesaid, and stated in substance, that he, the said William S. Wedge, had been, and then was, authorized and empowered by R. W. Allen and John Henderson, citizens of Baltimore aforesaid, and the owners of said schooner Catharine, to effect a sale thereof, and the said Wedge then and there employed the said Charles Tyng to sell the said vessel.

That the said William S. Wedge was in possession of a power or letter of attorney, bearing date the eleventh day of March, in the year one thousand eight hundred and thirty-nine, whereby the said R. W. Allen and John Henderson, therein described as both of Baltimore, owners of the schooner Catharine, did make, constitute, and appoint, the said William S. Wedge, the master of the said schooner, their true and lawful attorney for them, and in their names, to make sale and dispose of the said schooner Catharine and appurtenances, to any person or persons, to receive and give receipts for the consideration money which the same might sell for, and to make, sign, seal, acknowledge, and deliver, as their act and deed, a bill

or bills of sale therefor, to the purchaser or purchasers of the said schooner, with power also, an attorney or attorneys under him for that purpose, to make and substitute, and to do all lawful acts requisite for effecting the premises, thereby ratifying and confirming all that their said attorney, or his substitute or substitutes, should do therein by virtue thereof.

That early in the month of June, one thousand eight hundred and thirty-nine, he, the said Charles Tyng, succeeded in effecting (as he then believed) a sale of the said schooner to the mercantile house or firm of Don Pedro Martinez & Co., of Havana aforesaid, for the sum of seven thousand seven hundred and fifty dollars, together with some additional charges.

That the day after the said Charles Tyng had arranged the terms and conditions of the said sale, he caused possession of the said schooner to be delivered to the said Don Pedro Martinez & Co., the said Charles Tyng feeling assured and confident that the sale would be consummated by the payment of the consideration money, at which time, and not before, the title to the said vessel was to be transferred.

That the principal member of the said firm, who had negotiated for, and made the purchase of, the said schooner for his firm, about two days after the said Tyng had concluded the terms of the said sale, went to Matanzas upon business; and the said William S. Wedge finding a vessel about to sail for Philadelphia, became extremely anxious to close the said business and to take passage on board the said vessel.

That the said Charles Tyng was desirous of assisting and obliging the said William S. Wedge in the premises, and entertaining no doubt or apprehension of any difficulty with the said firm of Don Pedro Martinez & Co., which enjoyed the reputation of great wealth, and was of respectable standing, the said Tyng undertook, and did actually advance to the said William S. Wedge, as the agent, and in behalf of the said R. W. Allen and John Henderson, the amount of the said seven thousand seven hundred and fifty dollars, deducting the said Tyng's charges and expenses.

That in order to pay the said William S. Wedge, he purchased bills on the United States for the amount of the balance due the said Wedge, one set of which bills he delivered to the said Wedge, together with a copy of his account, and the said Wedge then sailed for Philadelphia, having previously made, executed, and delivered, to the said Tyng, a power appointing the said Tyng his substitute, in order to enable the said Tyng to transfer the said schooner, which power, appointing the said Tyng his substitute as aforesaid, was endorsed on the original letter of attorney, made and delivered by the said R. W. Allen and John Henderson, to the said William S. Wedge, and is in the words or to the effect following, that is to say:

Know all men by these presents, that I, William S. Wedge, named in the foregoing letter of attorney, by virtue of the power

and authority to me given, in and by the said letter of attorney, do hereby make and substitute Charles Tyng, of the city of Havana, to be the true and lawful attorney of the said R. W. Allen and John Henderson, the constituents in the foregoing letter named, to do, execute, and perform, all and every thing as shall be requisite and necessary to be done and performed, for effecting the purpose and object in the said letter of attorney contained, as fully and effectually in all respects and to all intents and purposes, as I myself might or could do, in virtue of the power and authority aforesaid, if personally present, hereby ratifying and confirming all and whatsoever my said substitute shall *do*, or cause to be done, by virtue thereof.

In witness whereof, I hereunto set my hand and seal, at the city of Havana, the eighth day of June, one thousand eight hundred and thirty-nine.

That the said letter of substitution was duly signed, sealed, and acknowledged, by the said William S. Wedge, on the day of the date thereof, before John A. Smittos, vice consul of the United States in Havana, and, thereupon, was delivered on the same day to the said Tyng.

That the said letter of substitution was delivered to, and received by him, said Charles Tyng, in order to enable him to control the transfer of the said vessel, and thereby to secure the repayment of the advances made to the said William S. Wedge as aforesaid.

That the principal member of the said firm of Don Pedro Martinez & Co., did not return from Matanzas aforesaid, for about the space of ten days, when the said Tyng sent in the bill for the amount of the said purchase, in order to bring the same to a conclusion. That the said firm, thereupon, refused to complete the said purchase, alleging as a reason, that the said vessel was not coppered with heavy copper, as she had been represented to be, and that the inventory furnished to them was incorrect, and refused to accept or receive the said schooner at the price agreed upon, and wholly refused to consummate or proceed in the said sale.

That in the interval of the absence of the said member of the firm in Matanzas as aforesaid, the said Tyng, at the request of another member of the said firm, effected a charter of the said schooner to John S. Thrasher, a citizen of the United States of America, residing *in* Havana, a copy of which charter party is hereunto annexed marked A.

That finding it impossible to compel the said Don Pedro Martinez & Co. to fulfil the terms of the said sale, and to pay the amount agreed upon, without entering upon a law suit, which, in the island of Cuba, is exceedingly dilatory and expensive, the said Tyng made efforts to obtain another purchaser for the said schooner.

That on or about the twenty-fifth day of June, in the year one thousand eight hundred and thirty-nine, the said Tyng succeeded in effecting a sale of the said schooner to Don Simon Teran, of

Havana aforesaid, the terms and conditions of which sale were reduced to writing in the Spanish language, a true and correct translation whereof, is hereunto annexed, marked B.

That previous to effecting the last mentioned agreement, John S. Thrasher, on the application of said Tyng, agreed to a modification of the charter party; and that the paper hereunto annexed, marked C, is a true copy of such modification of the said charter party, signed by the said John S. Thrasher.

That he (the said Tyng) arranged with the said John S. Thrasher, to relinquish the said charter party, whenever the cargo, laden in and on board of the said vessel, by the said Thrasher, should be landed in the island of Principe, in accordance with the bill of lading; he holding the charter party and the said Tyng responsible for the price and sum therein stipulated, in case the charter was not fulfilled up to the landing of the said cargo.

That the said John S. Thrasher loaded, in and on board of the said schooner, a cargo, the particulars of which are set forth in the invoice thereof, a copy of which is hereto annexed, marked D.

That Andrew T. Morrow, then the master of the said schooner, signed a bill of lading of the said cargo, a copy of which is hereto annexed, marked E.

That a day or two before the sailing of the said vessel, the said Andrew T. Morrow was replaced in the command of the said schooner by Captain F. A. Perterson, the said Morrow having been taken sick.

That the said schooner sailed *for* the Havana, bound for the island of Principe, with the said cargo in and on board thereof.

That some time on or about the thirteenth day of August, A. D. 1839, the said schooner being at the time on the high seas, and within the jurisdiction of this court; and whilst in the prosecution of her voyage to the island of Principe aforesaid, with the said cargo in and on board thereof, was forcibly seized and taken possession of by an armed vessel or cruizer, not belonging to the Government or sailing under the flag of the United States, but being a foreign vessel called the Dolphin; and that the said foreign *armed* vessel, having taken possession of the said schooner, displaced the said Peterson, the master thereof, from the command; and having removed the crew, with the exception of two men and the said Peterson, out of the said schooner, one Robert Hamilton Dundas assumed and took the command thereof, with men to serve as a crew; and that the said Dundas brought the said schooner into the port of New York, where, at the time of filing the claim of said Tyng, she lay at anchor within the waters of the southern district of New York, within the ebb and flow of the tide, and within the jurisdiction of this court.

That the seizure and detention of the said schooner was attempted to be justified by the said Dundas, and by the other persons aiding and abetting the said seizure and detention, upon the allegation

that the said schooner was, at the time of the aforesaid seizure and detention thereof, a vessel engaged in the slave trade, and although sailing under the American flag, was in fact owned by Spaniards, or some person or persons not being American citizens. But that, in fact, the said schooner or vessel did not belong to any person or persons not being American citizens; and, on the contrary, was at the time held and owned by, and was under the control of, the said Tyng.

That the said R. W. Allen and John Henderson insist that the said Tyng, having alleged that he had sold the said schooner, and having actually paid the consideration money therefor, and accepted the aforesaid letter of substitution, by which he obtained the power to transfer the said schooner to whom he thought proper; and having undertaken, without their knowledge, consent, or approbation, *to* sell the said vessel to the said Teran, upon the terms mentioned in the said contract, that the said Tyng had therefore made the said vessel his own; and have refused, and still do refuse, to refund the money paid by him to the said Wedge as aforesaid.

That the said Simon Teran insists, that inasmuch as the said Tyng has failed to deliver the said vessel, in pursuance of his aforesaid contract, the said Tyng is bound to restore and repay the money advanced by him, said Teran, under the said contract, and has actually commenced *a* suit against the said Tyng in one of the courts or tribunals of Havana aforesaid, to recover back the said money so advanced by him as aforesaid.

That the said schooner Catharine and her cargo were, at the time of filing said claim of said Charles Tyng, held by the marshal of the United States, by virtue of the process in this cause.

It was also admitted by the attorney of the United States, that John S. Thrasher, if examined as a witness on the part of said Tyng, would swear, that previous to the agreement made by the said Tyng with Don Simon Teran, dated June 25th, 1839, and set forth in the claim and answer in this case, the said Tyng applied to the witness Thrasher to modify the charter party of said witness in such manner as to enable the said Tyng to make delivery of the vessel at Bona, on or before 1st of October, 1839, and that the reason assigned by said Tyng to said witness for desiring such modification, was the hardship of the case; and also that said Thrasher would further swear that he (Thrasher) was induced by the hardship of the case to assent to such modification; and it was agreed that this admission be read in evidence on the hearing of this cause, in lieu of the deposition of said Thrasher, subject to all legal objections to the competency of the matters above stated, or any part thereof.

The Charter Party, dated 15th June, 1839, and marked A; the Contract, dated 25th June, 1839, and marked B; the Agreement of J. S. Thrasher, dated June 25th, 1839, and marked C; the Invoice, marked D; and the Bill of Lading, marked E—referred to

in the foregoing statement—are the same papers subjoined to the claim and answer of *Charles Tyng*, and hereinbefore contained.

On the foregoing evidence the district court, after hearing the counsel for the respective parties, made a decree dismissing the libel. This decree having been appealed from by the United States, and the case having been brought to trial on such appeal, in the Circuit Court of the United *States* for the southern district of New York—it was then further proved, on the part of the United States, that in the month of September, 1840, on taking out the cargo of the Catharine, which had not before been removed, there were found near the bottom of the hold two bags containing iron manacles or hand-cuffs. The witness stated that the manacles in one of the bags were counted, and were found to be one hundred and seventy-five in number, and that the other bag was about the same size, and appeared to contain about the same number, but its contents were not counted.

It is hereby agreed that the foregoing statement contains all the depositions and proofs before the Circuit Court of the United States for the southern district of New York, in the second circuit, which were used on the hearing of the appeal in the said court, and also all the documents at length, used on the said appeal, that are deemed material or relevant, by either party, and a correct statement of the contents of the said documents as not above set forth at full length.

And it is further agreed that the foregoing statement be incorporated in the record, and returned by the clerk of this court on the appeal to the Supreme Court of the United States.

New York, January 17, 1842. F. R. TILLON,
Proctor for claimant C. Tyng.
O. HOFFMAN, *U. S. Attorney.*

Decree of the Circuit Court.

At a stated term of the Circuit Court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Thursday, the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and forty, present, the honorable Smith Thompson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES,
vs.
THE SCHOONER CATHARINE, her tackle, &c.; Charles Tyng, claimant.

This cause having been brought to a hearing upon the appeal from the decree of the district court dismissing the libel and ordering a restitution of the said schooner, her tackle, apparel, and furniture, to the claimant, Charles Tyng. And Benjamin F. Butler, Esq., Uni-

ted States District Attorney, having been heard on the part of the appellants, and Charles O'Connor, Esq., on the part of the claimant and appellee, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by this court, that the decree of the said district court be reversed, and that the said schooner Catharine, her, tackle, apparel, and furniture be, and the same accordingly is, condemned as forfeited to the United States.

And it is further ordered, adjudged, and decreed that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the first Monday of April next, and that upon the return thereof he distribute the proceeds according to law.

And it is further ordered that neither party recover against the other costs in this court, or the district court.

And it is further ordered, adjudged, and decreed, that the petition of William Michael and James Foxcroft, for the payment of their wages out of the proceeds of sale of the said schooner be denied without costs.

SMITH THOMPSON.

SUPREME COURT OF THE UNITED STATES:

THE SCHOONER CATHARINE, her tackle, apparel, and furniture, *advs.* THE UNITED STATES. } *Appeal.*

To the honorable the Supreme Court of the United States:

Whereas a libel was on the thirty-first day of December, one thousand eight hundred and thirty-nine, filed in behalf of the United States of America by Benjamin F. Butler, Attorney of the United States for the southern district of New York, against the schooner Catharine, her tackle, apparel, and furniture, and alleging in effect as follows:

That the said schooner Catharine was built at the port of Baltimore, for the purpose of carrying on trade or traffic in slaves contrary to the act of Congress passed March 22, 1794.

That the said vessel was caused to sail from some part of the United States to carry on trade or traffic in slaves to some foreign country, contrary to the act of March, 1794.

That the said vessel was built in the port of Baltimore for the purpose of procuring from some foreign kingdom the inhabitants thereof to be transported to some other foreign kingdom, to be disposed of as slaves, contrary to the act of Congress passed March, 1794.

That the said vessel was caused to sail from a port in the United States for the purpose of procuring from some foreign kingdom the inhabitants, to be transported to some other foreign country, to be disposed of as slaves, contrary to the act of March, 1794.

That the said schooner Catharine was employed and made use of in the transportation or carrying of slaves from one foreign port or place to another foreign port or place, contrary to the act of 1800.

That the said vessel was built in a port of the United States for the purpose of procuring negroes, mulattoes, or persons of color, from some foreign kingdom, to be transported to some other foreign kingdom, to be disposed of as slaves, contrary to the act of 20th April, 1818.

That the said vessel was built and prepared at the port of Baltimore, contrary to the act of April, 1818.

That the said vessel was caused to sail from the port of Baltimore for the purpose of procuring negroes, molattoes, or persons of color from some foreign kingdom, to be transported to some other port or place unknown, to be disposed of as slaves, contrary to the act of April, 1818.

That the said vessel was lying in the port of New York, within the jurisdiction of that court.

That, by reason of the premises, the said schooner Catharine, her tackle, apparel, and furniture, had become forfeited to the use of the United States.

And praying process, and that the said vessel might be condemned and sold.

That the said vessel, having been seized, according to the prayer of the said libel, under process issuing out of the said district court, Charles Tyng filed his claim to said schooner Catharine, by which it was alleged:

That the said claimant was a native citizen of the United States, and went to Havana to reside.

That the said schooner Catharine arrived in Havana from Baltimore, under the command of William J. Wedge, *and* authorized claimant to sell said vessel for the owners, R. W. Allen and John Henderson, citizens of Baltimore.

That the said Wedge was in the possession of a power of attorney from said Allen and Henderson to sell said vessel.

That said claimant effected a sale of said vessel to Don Pedro Martinez & Co., of Havana, and delivered possession thereof to them.

That a principal member of said firm, two days after such sale, went to *Mantazas*.

That said claimant thereupon advanced to said Wedge the purchase money of said vessel.

That said Wedge substituted the claimant as the attorney of said Allen and Henderson.

That said power was given to claimant to enable him to close with the said firm for the sale of said vessel, and secure the repayment of the advances.

That when the said principal member of said firm returned from Mantanzas, they refused to complete the said purchase.

That during the absence of said member in Mantanzas, claimant effected a charter at the request of another member of said firm, to John S. Thrasher, a citizen of the United States.

That claimant effected a conditional sale of said vessel *to* Simon Teran, of Havanna, upon the terms and conditions in the said claim and answer mentioned, the said schooner to be delivered and transferred at Bona, in Africa, on the payment of the purchase money, and not otherwise.

That claimant induced Thrasher to modify the charter so as to make the delivery of the vessel at Bona.

That claimant arranged with said Thrasher to relinquish the charter when the cargo was landed at Principe.

That Andrew T. Morrow, then master of said schooner, signed a bill of lading for the cargo.

That said Morrow was superseded in the command of said schooner by F. A. Paterson.

That said schooner sailed from Havana for the island of Principe with the cargo.

That said schooner, while on the high seas, was seized by an armed vessel not belonging to the United States, called the Dolphin, and put under the command of Robert Hamilton Dundas, and brought by him into the port of New York.

That said vessel was owned by claimant.

That said vessel was not engaged or intended to be employed in the slave trade.

That Don Simon Ternan has commenced a suit against claimant to recover back the money advanced by him to claimant; and that the said vessel had not become forfeited, in manner and form as in said libel was alleged; and praying that she be restored to the claimant with all damages and costs sustained in the premises.

That William Michael and James Foxcroft also filed their claim to said schooner Catharine, by which it was alleged that the said Frederick A. Peterson did ship claimants as first mate and mariner at Havanna, during her voyage to Prince's island, coast of Africa.

That in pursuance thereof, claimants went on board of said schooner as mate and mariner.

That said vessel was seized by the Dolphin while she was proceeding on her voyage to Prince's island.

That claimants continued on board of said schooner in such capacities, until discharged by the marshal of the southern district of New York.

That claimants performed their respective duties according to the best of their ability, and are entitled to their wages.

That said vessel has been libelled by the United States, and is now under the control of her officers.

That claimants acted in good faith, and had a prior lien upon said vessel for their wages, and prayed that their wages might be allowed and paid by the United States; and that, if necessary, process might issue and said vessel be condemned.

That the said cause came on to be tried before the said district judge, on or about the tenth day of July, one thousand eight hun-

dred and forty, upon the depositions and proofs taken in the cause, and the testimonies and proofs adduced by the respective parties.

And the said judge having advised thereon, on the fourth day of August, 1840, made a final decree or sentence in said cause, whereby a decree of dismissal of said libel was pronounced.

That the said libellants and the said claimants, William Michael and James Foxcroft, respectively appealed from the said final decree, and every part thereof, to the Circuit Court of the United States for the southern district of New York, in the second circuit, appointed to be held at the City Hall, in the city of New York, in the said southern district of New York, on the last Monday of November, one thousand eight hundred and forty, and did duly file their respective petitions of appeal in the said circuit court, setting forth the premises, and praying that the proofs taken on the trial before the said judge might be certified to the said circuit court; and therein and thereby asked and claimed to offer new proof on the said appeal, and sought a new decision on the facts of the case, as they should appear on the hearing.

That the said cause came on to be tried on the said appeal, in the said circuit court, before the honorable Smith Thompson, judge of the said Circuit Court of the United States for the southern district of New York, on or about the twenty-fourth day of December, one thousand eight hundred and forty, upon the depositions and proofs taken in the cause, and the testimony and proofs adduced by the respective parties.

And the said judge of the said circuit court having advised thereon, on the twentieth day of January, one thousand eight hundred and forty-one, made a final decree or sentence in the said cause, whereby a decree was pronounced, by which the said *the* decree of dismissal of said libel by the said district court was reversed, and the said schooner or vessel was condemned as forfeited to the said United States.

And the said Charles Tyng doth hereby appeal from the said final decree of the said Circuit Court of the United States for the southern district of New York, in the second circuit, and every part thereof, to the Supreme Court of the United States, to be held at the Capitol in the city of Washington, on the second Monday of January, one thousand eight hundred and forty-two, and prays that the proofs presented and used on the last-mentioned trial, before the last-mentioned judge, may be certified to the said Supreme Court of the United States; and the said appellant herein and hereby seeks a new decision on the facts of the case, as they shall appear on the hearing.

F. R. TILLON,
Proctor for Claimant.
F. B. CUTTING, *Advocate.*

Filed 10th Feb'y, 1842.